

FOREIGN DIRECT INVESTMENT IN TURKEY: LEGAL FRAMEWORK

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ABSTRACT

This article examines the current situation in the Turkish legislation on foreign direct investments. It reviews the Turkish Foreign Direct Investment Law (Law No 4875), which involves main concepts, definitions and principles on foreign direct investments in Turkey; acquisition of real estate by foreigners, employment of foreigners and settlement of investment disputes.

Keywords: *Foreign Direct Investment Law, Foreign Investment, Foreign Investor, Acquisition of Real Estate by Foreigners, Employment of Foreigners*

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INTRODUCTION

The "Foreign Direct Investment Law" (FDI) (Law No 4875)¹ entered into force on June 17, 2003 and repealed the "Encouragement of Foreign Capital Law" (Law No 6224) in Turkey. The FDI Law aims to regulate the principles to increase foreign direct investments. Furthermore, the FDI Law establishes a notification-based system for foreign direct investment rather than screening and approval.

In the last decade significant developments occurred in the Turkish foreign investment legislation and laws related to the rights of foreign investors. The purpose of this paper is to examine the Turkish Constitution, the FDI Law, the Law on the Work Permit of Foreigners², the Real Estate Law³ and the Turkish International Arbitration Law⁴ in

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¹ Official Gazette June 17, 2003, No 25141.

² Official Gazette March 6, 2003, No 25040.

³ Official Gazette December 29, 1934, No 2892.

⁴ Official Gazette July 5, 2001, No 24453.

order to explain the changes in the legal framework of foreign direct investments.

In addition to the domestic laws regarding to foreign investments, Turkey has international obligations. Turkey is going through the European Union Accession negotiations; therefore, Turkey is under obligation to harmonize its legislation according to *acquis communautaire*.⁵ Turkey signed and ratified various bilateral and multilateral treaties relating to investments. Turkey is also a member of many international organizations (such as the Organization for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), the International Center for Settlement of Investment Disputes (ICSID), the Multilateral Investment Guarantee Agency (MIGA) which deal with foreign investments by means of agreements, guidelines and principles.

As a result of the various improvements in the legal framework, foreign investments in Turkey have increased.⁶ Because of their influence on foreign direct investments, these improvements will be examined below.

LEGISLATION ON FOREIGN INVESTMENT IN TURKEY

The Turkish Constitution of 1982

According to the Turkish Constitution, foreigners and the Turkish nationals do not have the same rights in Turkey. In accordance with Article 16 of the Constitution, there might be restrictions to the fundamental rights and freedoms of foreigners but it can only be done by law and the restrictions can not violate international law. For example, there are some restrictions by law on employment of foreigners and acquisition of real estate by foreigners.

Relevant Codes And Other Legislation Regarding Foreigners

In the Turkish legislation there is no single law on rights and obligations of foreigners; but there are many specific laws regulating the status of foreigners. The "Foreign Direct Investment Law" (FDI Law) is the essential law regarding foreign investments.⁷ Secondly, there is the "Regulation for the Implementation of Foreign Direct Investment Law". Thirdly, for the employment of foreigners in Turkey there is the "Law on

⁵ See details Ekşi, 2006.

⁶ For the recent data see at <http://www.hazine.gov.tr/english/forinvest.htm> (March 27, 2007).

⁷ Law No 4875, Official Gazette 17 June, 2003, No 25141. English translation of the articles of the FDI Law are quoted from at <http://www.hazine.gov.tr/english/ybs/FDI%20Law.doc> (March 27, 2007).

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the Work Permit of Foreigners” (Law No 4817). Fourthly, there is the “Application Regulations for the Law on Work Permits of Foreigners”. Fifthly, there is the “Regulation on the Employment of Foreign Personnel in Foreign Direct Investments”. Sixthly, for the acquisition of real estate by foreigners, there are provisions in the “Real Estate Law” (Law No 2644) and the FDI Law. Seventhly, there is the Turkish “International Arbitration Law” (Law No 4686).⁸

Furthermore, there are other laws such as the Mining Law (Law No 3213)⁹, the Turkish Commercial Law (Law No 6762)¹⁰, the Free Zones Law (Law No 3218)¹¹, the Turkish Passport Law (Law No 5682)¹², the Law on the Residence and Travel of Foreigners in Turkey (Law No 5683)¹³, the Encouragement of Tourism Law (Law No 2634)¹⁴, the Industry Regions Law (Law No 4737)¹⁵ and the Petroleum Law (Law No 6326)¹⁶, that are applied to foreigners depending on the issues raised.

Bilateral And Multilateral Treaties

International agreements that Turkey is party to also affect foreign investments. Generally speaking, signing a treaty does not necessarily mean that it is binding. Countries such as Turkey require a ratification process for the treaty to be binding. The national laws determine the procedure for ratification. In order to be binding, treaties have to be ratified according to the Turkish Constitution Article 90.¹⁷

Bilateral treaties. There are many bilateral treaties such as the Bilateral Investment Treaties (BITs) or Bilateral Agreements for Promotion and Protection of Investments and the Bilateral Agreements on Friendship, Commerce and Navigation that give rights and advantages for foreigners. When there is foreign direct investment, one has to look for if there is any bilateral treaty with the country that he/she is a

⁸ Official Gazette July 5, 2001, No 24453. For the English translation of the International Arbitration Law see, Dayınlarlı, 2002.

⁹ Official Gazette June 15, 1985, No 18785.

¹⁰ Official Gazette July 9, 1956, No 9353.

¹¹ Official Gazette July 15, 1985, No 18785.

¹² Official Gazette July 24, 1950 No 7564.

¹³ Official Gazette July 24, 1950 No 7564.

¹⁴ Official Gazette March 16, 1982, No 17635.

¹⁵ Official Gazette January 19, 2002, No 24645.

¹⁶ There is a new Draft for Petroleum Act.

¹⁷ Turkish Constitution Article 90 regulates *Ratification of International Treaties (As amended on May 22, 2004.)* English translation of the articles of the Turkish Constitution are quoted from at <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm> (March 22, 2007).

national of each treaty might have their own definitions for investment, investor.¹⁸

Multilateral treaties. In addition to bilateral treaties, there are many multilateral treaties that are important for foreigners and foreign investments. Some treaties are specifically related with foreign investments such as the Convention on the Settlement of Investment Disputes (ICSID). The International Centre for Settlement of Investment Disputes (ICSID) was established under the **Convention on the Settlement of Investment Disputes between States and Nationals of Other States**, which came into force on October 14, 1966. According to this Convention, the ICSID provides facilities for the conciliation and arbitration of disputes between member countries and investors who qualify as nationals of other member countries.¹⁹

Moreover, there are also other treaties that deal with foreign investment, investor rights or other issues such as dispute settlement. In general, the Energy Charter Treaty (ECT) or the General Agreement on Tariffs and Trade (GATT) and especially the Trade Related Investment Measures Agreement (TRIMs) can be given as examples. Turkey is party to all these of these agreements. For example, ECT provides a multilateral framework for energy cooperation and the Treaty provisions focus on mainly promotion of foreign energy investments. The ECT has own principles, definitions for investment and investor; and articles relating dispute settlement procedures.

The Foreign Direct Investment Law (Law No 4875)

There is no single definition for foreign investment and investors under international and national laws.²⁰ According to Article 2 (a) of the Turkish FDI Law foreign investor is:

- 1) Real persons who possess foreign nationality and Turkish nationals resident abroad, and*
- 2) Foreign legal entities established under the laws of foreign countries and international institutions, who make foreign direct investment in Turkey.*

And according to Article 2 (b) of the FDI Law, foreign direct investment is:

¹⁸ For the list of Bilateral Agreements for Promotion and Protection of Investments look at <http://www.investinturkey.gov.tr/cms/index.php?a=90> (March 26, 2007) or http://www.unctad.org/sections/dite_pcbb/docs/turkey.pdf (March 26, 2007)

¹⁹ <http://www.worldbank.org/icsid/about/about.htm> (March 27, 2007).

²⁰ For further information see Tiryakioğlu, 2003.

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i) Establishing a new company or branch of a foreign company by foreign investor,

ii) Share acquisitions of a company (any percentage of shares acquired outside the stock exchange or 10 percent or more of the shares or voting power of a company acquired through the stock exchange)

by means of, but not limited to the following economic assets:

1) Assets acquired from abroad by the foreign investor:

- *Capital in cash in the form of convertible currency bought and sold by the Central Bank of Turkey,*
- *Stocks and bonds of foreign companies (excluding government bonds),*
- *Machinery and equipment,*
- *Industrial and intellectual property rights;*

2) Assets acquired from Turkey by foreign investor:

- *Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value,*
- *Commercial rights for the exploration and extraction of natural resources.*

According to Article 1 the objective of the FDI Law is:

to regulate the principles to encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standards; to establish a notification-based system for foreign direct investments rather than screening and approval; and to increase foreign direct investments through established policies. This Law establishes the treatment to be applied to foreign direct investments.

The FDI Law repealed the "Encouragement of Foreign Capital Law" (Law No 6224). The former Law No 6224 required prior approval in order to invest in Turkey and gave broad power the Undersecretary of the Treasury. The FDI law removed the prior approval requirement and reduced Undersecretariat's role.²¹ Foreign direct investment permits issued by the General Directorate of Foreign Investment are abolished by the FDI Law. The existing companies with foreign capital established under Law No 6224 shall be subject to the FDI Law. This law gives more advantages for foreign investors as will be examined below.

²¹ For detailed information see, Kocasakal, 2005.

Principles of Foreign Direct Investment

Under the law, the first principle is on “freedom to invest” which is stated in Article 3 as:

Unless stipulated by international agreements and other special laws:

1. Foreign investors are free to make foreign direct investments in Turkey.

The second principle is on “national treatment” which is stated in Article 3 as:

Unless stipulated by international agreements and other special laws:

2. Foreign investors shall be subject to equal treatment with domestic investors.

As stated in Article 3, if international agreements or other special laws provide; otherwise, there may be restrictions for these two principles given above.²²

The third principle is on “expropriation and nationalization”. The Turkish Constitution Articles 46 (expropriation) and 47 (nationalization and privatization) are general regulations for expropriation and nationalization. According to the Turkish Constitution Article 46, expropriation of privately owned real estate is possible in accordance with the principles and procedures prescribed by law, where the public interest requires and the actual compensation is paid in advance. According to the Turkish Constitution Article 47, private enterprises performing public services may be nationalized when this is required by public interest.

Indeed, expropriation and nationalization are also specifically regulated under Article 3(b) of the FDI Law:

Foreign direct investments shall not be expropriated or nationalized, except for a public purpose and upon compensation in accordance with due process of law.

The fourth principle is on “transfers”. Under the FDI Law foreign investors have freedom to transfer. According to Article 3 (c) FDI Law:

Foreign investors can freely transfer abroad: profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or special financial institutions.

²² For further information on restrictions see, Çelikel & Gelgel, 2005.

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And valuation of non-cash capital is valued according to Article 3(f) FDI Law:

Non-cash capital is valued within the regulations of Turkish Commercial Law. In case that stocks and bonds of companies residing abroad are used as foreign capital share of foreign investors, the values determined by the relevant authorities in the home country, or by the experts designated by the courts of the home country, or any other international institutions performing valuations will be accepted.

The fifth principle is on "access to real estate". There are different requirements for foreigners for acquisition of real estate under the Turkish legislation. The general requirement for acquisition of real estate by foreigners is regulated under Article 35 of the "Real Estate Law" and specific laws such as the FDI Law, the Encouragement of Tourism Law, the Petroleum Law and the Industry Regions Law, which include conditions for real estate acquisition for foreigners.

The principle on real estate acquisition for foreigners can be classified under three headings:²³ real estate acquisitions of foreign natural persons, real estate acquisitions of foreign legal persons, and real estate acquisitions of companies with foreign capital.

Firstly, according to Article 35 of the Real Estate Law, a foreign natural person can acquire real estates for the purposes of using as residence or business aims in Turkey with the reservation of "reciprocity" and compliance with legal restrictions. The total area of the real estates and limited real rights on real estates that a natural person of foreign nationality can acquire all over the country can not exceed 25.000 m². Within the same conditions set out in this paragraph the Council of Ministers is authorized to increase the area up to 30 hectares.

Secondly, real estate acquisitions of foreign legal persons is regulated in Article 35 paragraph 2 and 3 of the Real Estate Law. Companies having legal personality established in foreign countries under the laws of these countries can acquire real estates and limited real rights on real estates in Turkey according to the provisions of special laws. In case of establishing mortgage in Turkey in favor of foreign real persons and trading companies having legal personality established in foreign countries according to the laws of these countries, the conditions and restrictions set out in first and second paragraphs of Article 35 shall not be applied²⁴.

Relevant special laws comprise of the **Law for Encouragement of Tourism (Law No 2634)**, the Petroleum Law (Law No 6326), and

²³ <http://www.investinturkey.gov.tr/cms/index.php?c=184> (March 26, 2007).

²⁴ English translation of the articles of Real Estate Law are quoted at <http://www.tkgm.gov.tr/ana.php?Sayfa=icerikana&ICID=2&DID=9> (March 23, 2007).

the Industry Regions Law (Law No 4737). It is also possible that these laws have more advantages compared to the Real Estate Law in Article 35. For example according to Article 8/E of the Law for Encouragement of Tourism (Law No 2634):

Foreign real and legal persons who want to make investment for tourism objective in Turkey, can acquire real estate by the decision of the Council of Ministers in tourism areas and centers being exempted from reciprocity principle and restrictions formulated for foreigners.²⁵

According to the Real Estate Law the Council of Ministers is authorized to determine the places where foreigners can not acquire real estates and limited real rights on real estates. For the other cases where foreigners can acquire real estate according to the above mentioned procedures there are some limits. The real estates and limited real rights on real estates acquired contrary to the provisions of Article 35 or determination of misuse according to the purpose of acquisition without legal necessity shall be converted to value and paid to owner unless the real estates liquidated by the owner within the period given by the Ministry of Finance.

Thirdly, there is a regulation on real estate acquisition of companies with foreign capital. According to Article 9 of the "Regulation for Implementation of Foreign Direct Investment Law" company types which can be established or participated by foreign investors are designated in the Turkish Commercial Code. Under Article 3 (d) of the FDI, companies may freely acquire real estate or limited rights in rem through a legal entity established or participated by foreign investors in Turkey, provided such acquisitions are permitted for Turkish citizens. A legal entity established according to the Turkish Commercial Code will be considered as a Turkish company. Therefore, there is no extra limitation on real estate acquisitions for foreigners that establish companies according to the Turkish Commercial Code.

The sixth principle is on "employment of foreigners". According to the Turkish Constitution Article 48:

Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free.

The state shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.

²⁵ English translation of the articles of the "Law for Encouragement of Tourism" are quoted from at <http://www.kultur.gov.tr/EN/BelgeGoster.aspx?17A16AE30572D31371BE64510F6C8BC9A815D607F36785E6> (March 27, 2007).

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In addition, work permits for foreigners are issued on the basis of the Law on Work Permits of Foreigners (Law No 4817)²⁶ which regulates the work of foreigners and the rules regarding the work permits in Turkey.²⁷ This law shall apply to foreigners working dependently or self-employed in Turkey, foreigners under vocational training and the natural and legal persons that employ foreigners in Turkey. Article 35 of the Law on Work Permits of Foreigners repealed the Law No 2007 dated June 11, 1932 on Arts and Services Assigned to Turkish Citizens in Turkey. According to Article 22 of the Law on Work Permits of Foreigners:

Procedures and principles related to the issuing of all kind of work permits, their restriction, cancellation, foreigners to be kept exempt from the work permit as well as the manner of fulfilling the liabilities of notification, shall be arranged by the regulations to be released in accordance with the present Law.

The "Application Regulations for the Law on Work Permits of Foreigners" has been prepared based on this article.

Moreover, Article 23 of the Law on Work Permits of Foreigners, regulates the "employment of foreigners in foreign capital investments". According to this Article:

Foreigners, who are requested to be employed in companies and establishments founded in the framework of the Law of Foreign Capital Stimulation number 6224²⁸, may be employed by the work permit issued by the Ministry in the framework of the procedures and principles to be determined by the regulations to be released jointly with the Undersecretary's Department of Treasury.

Furthermore, according to Article 3 (g) of the FDI Law regarding "Employment of Expatriates":

Foreign personnel working permits are issued by Ministry of Labour and Social Security for foreign personnel to be employed in the companies, branches and entities established within the scope of this Law.

²⁶ Official Gazette March 6, 2003, No 25040. English translation of the articles of the Law on the Work Permits of Foreigners are quoted from at http://www.yabancalismaizni.gov.tr/english/doc/4817_law.htm (March 27,2007).

²⁷ *The objective of the present Law is to render the work of foreigners in Turkey subject to permission and to determine the principles related to the work permits to be granted to these foreigners* (Article 1).

²⁸ The Law for Encouragement of Foreign Capital No 6224 dated 18 January 1954 is repealed by the FDI Law (Law No 4875). The references made to Law No 6224 in the legislation are considered as referring to the related provisions of this Law.

In a Regulation to be prepared jointly by the Undersecretariat of Treasury and the Ministry of Labour and Social Security, according to Article 23 of the Law on Foreign Personnel Working Permits No 4817 dated 27 February 2003, the companies and entities with foreign capital which shall be in the context of the Regulation, the definition of the key personnel in the scope of the Regulation and other special procedures and principles concerning the work permits of key personnel will be determined.

Pursuant to Article 23 of the "Law on Work Permits of Foreigners" (Law No 4817) and Article 3 (g) of the FDI Law (Law No 4875), "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment" has been prepared.

We also have to mention that Article 14 of the "Law on Work Permits of Foreigners" regulates rejection of the work permit application. Under paragraph 1, sub-paragraph (b) of this Article, if there is a person in the country with the same quality available for a period of four weeks to perform the applied job, the request for work permit or extension of work permit will be rejected. However, this provision will not be applicable for personnel to be employed within the context of the "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment".

According to Article 2 of the "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment":²⁹

The present regulations shall be applicable for key personnel³⁰ of foreign nationality to be employed in special direct foreign investments³¹ and liaison offices.

However, for the work permits of

a) personnel of foreign nationality apart from the key personnel to be employed with special direct foreign investments,

b) all kind of personnel of foreign nationality to be employed in direct foreign investments apart from those special direct foreign investments,

the provisions of the Execution Regulations about the Law number 4817 and the Law on Work Permits of Foreigners shall be applicable.

²⁹ English translation of the articles of the "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment" are quoted from at http://www.yabancalismaizni.gov.tr/english/doc/4817_law_reg-2.htm (March 22, 2007).

³⁰ Article 4 gives the definition of "key personnel".

³¹ Article 4 gives the definition of *Special Direct Foreign Investments*

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The objective of the Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment is stated in Article 1 as:

to determine the procedures and principles related to the work permits of personnel of foreign nationality to be employed in the scope of companies, branches and liaison offices active in the framework of the Direct Foreign Investments Law number 4875, pursuant the Law on Work Permits of Foreigners No 4817.

In addition, according to Article 5 of the "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment": The Ministry of Labour and Social Security shall issue the work permits for the key personnel to be employed with special direct foreign investments.

Moreover, the key personnel have special provisions.³² Under Article 7/1 of the Regulation, foreign key personnel to be employed in special direct foreign investments may apply for their work permit at the representations of the Republic of Turkey in the country of their nationality or their permanent residence. According to Article 8 of the Regulation, in case they are legally staying in Turkey, foreign key personnel or their employers may file their work permit applications directly with the Ministry.

Besides, Article 6 of the "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment" regulates employment in liaison offices. Under this Article:

The Ministry shall issue the work permit for a maximum of one person holding a letter of authorization in liaison offices active in the scope of the Law number 4875; under the condition that the office has brought at least 200.000 US Dollars or its equivalent in foreign currency from abroad within the last year for its activities.

The seventh principle is on "settlement of investment disputes". For the encouragement and legal protection of foreign investments, the settlement of investment disputes has an important role. Arbitration is an alternative way to judicial settlement of disputes and arbitration procedure is the most preferred dispute settlement method for international commercial disputes. Indeed, there is a special provision regarding dispute settlement under the FDI Law Article 3(e). According to the 3(e) FDI Law:

For the settlement of disputes arising from investment agreements subject to private law and investment disputes

³² See Article 7/1; Article 8; Article 9 of the "Regulations on the Employment of Personnel of Foreign Nationality in Foreign Direct Investment".

arising from public service concessions agreements which are concluded with foreign investors, foreign investors can apply either to the authorised local courts, or to national or international arbitration or other means of dispute settlement, provided that the conditions in the related regulations are fulfilled and the parties agree thereon.

Foreign direct investment might involve public service concession agreements. Possibility of arbitration on these agreements have been argued and resolved by the Constitutional amendment. Article 125 (As amended on August 13, 1999) of the Constitution:

Recourse to judicial review shall be available against all actions and acts of administration.

National or international arbitration may be suggested to settle the disputes, which arise from conditions and contracts under which concessions are granted concerning public services. Only those disputes involving foreign elements can be solved by international arbitration...

Following the Constitutional amendment necessary changes were made to the relevant laws.³³ Indeed, foreign investors are involved in projects such as building dams, electricity industry, road and gas pipelines and so on. These agreements are done under concession agreements. After the constitutional amendment, international arbitration is possible for these agreements.

In this regard, the "Turkish International Arbitration Law" regulates the procedures and principles regarding international arbitration.³⁴ This Law also aims to increase foreign investment and attract foreigners for projects. There are provisions on arbitration agreement, arbitrators, objection to arbitrators, responsibility of arbitrators, appointment, challenge, termination of mandate and competency of arbitrator or arbitral tribunal; arbitral procedure, recourse against arbitral awards and costs of arbitration. According to the International Arbitration Law Article 1:

...This Law shall apply with respect to the disputes containing foreign element and for which Turkey is determined as the seat

³³ Such as the Law Relating to the Principles Required to be Complied with in the Case of Having Apply to the Arbitration Process for the Settlement of Disputes Arising from Concessions Agreements and Contracts for Public Services. And changes were made to the Council of State Law, Administrative Procedure Law, and the Law Regarding the Carrying out of Certain Investments and Services within the Framework of the Build-Operate-Transfer Model Law, No 4493.

³⁴ For more information see, Akıncı, 2003; Nomer, Ekşi & Öztekin, 2003.

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*of arbitration or for which the provisions of this Law are chosen by the parties or the arbitrator or the arbitral tribunal.*³⁵

In investment disputes, parties may choose to resolve investment disputes according to the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States" (ICSID Convention). Turkey ratified the ICSID Convention³⁶ and has two reservations.³⁷ The ratification of the Convention obligates Party's courts to enforce an ICSID award as a final judgment of one of its courts.

The recognition and enforcement of arbitral awards and foreign court decisions are not within the scope of this article. However, we have to acknowledge that Turkey is party to multilateral treaties such as the "United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards", the "European Convention on International Commercial Arbitration" and the "**Convention on the Settlement of Investment Disputes between States and Nationals of Other States**".

CONCLUSION

As we have outlined in this paper, there is no single law on rights and obligations of foreigners. The fundamental legislation regarding foreign investment is the FDI Law. But there are also many specific laws applicable depending on the issues raised. Besides, Turkey is also party to bilateral and multilateral treaties relating to foreign investment. In addition, Turkey is going through the European Union Accession negotiations; therefore, Turkey is under obligation to harmonize its legislation according to *acquis communautaire*. To sum up, significant developments have occurred in the Turkish legislation regarding foreign investments which have reduced administrative formalities under the Turkish FDI Law, changed the dispute settlement procedures specifically in arbitration, changed the system for work permit of foreigners, and changed the acquisition to real estate of foreigners.

³⁵ Article 2 of the "Turkish International Arbitration Law" is regulating foreign element concept.

³⁶ Law No 3460, Official Gazette June 2, 1988, No 19830. Convention entered into force in Turkey on April 2, 1989.

³⁷ ICSID does not have jurisdiction on disputes arising from or related rights on immovables in Turkey where the Turkish courts have exclusive jurisdiction and Turkey does not consider itself bound by Article 64 of the ICSID Convention (Article 1(c) of the Law No 3460). According to Article 64: *Any dispute arising between Contracting States concerning the interpretation or application of this Convention, which is not settled by negotiation, shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.*

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