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Settlement of commercial disputes

Investor-State Dispute Settlement Framework

Compilation of comments

Addendum

Contents

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III. Compilation of comments

34. Canada

[Original: English]
[Date: 20 April 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

Canada is party to a significant number of both bilateral and multilateral international investment agreements (as the term is defined here). All of Canada's international investment agreements contain provisions on the settlement of investor-State disputes.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

Article 8.27 of the Comprehensive Economic and Trade Agreement signed between Canada and the European Union provides for the establishment of a permanent tribunal to resolve investor-State disputes under the Agreement. The text of the Agreement is available at http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/08.aspx?lang=eng.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

Article 8.28 of the Comprehensive Economic and Trade Agreement signed between Canada and the European Union provides for the establishment of a permanent appellate tribunal to review awards rendered by the investor-State Tribunal established in the Agreement. The text of the Agreement is available at http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/08.aspx?lang=eng.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

Article 8.29 of the Comprehensive Economic and Trade Agreement signed between Canada and the European Union commits Canada to pursue the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. The text of the Agreement is available at http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/08.aspx?lang=eng. Other Canadian IIAs, contain similar language. For example, Annex 8E of the Canada-Korea FTA provides that the Parties are to consider the establishment of a "bilateral appellate body or similar mechanism to review awards." The text of that Agreement is available at http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/korea-coree/fta-ale/08.aspx?lang=eng.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

Some, but not all, of Canada's international investment agreements contain provisions on amendment. In general, those provisions provide for the possibility of amendment based on the mutual agreement of the Parties. For example, Article 2202: Amendments, of NAFTA provides that "1. The Parties may agree on any modification of or addition to this Agreement. 2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement." Article 30.2 of CETA provides that "1. The Parties may agree, in writing, to amend this Agreement. An

amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable internal requirements and procedures necessary for the entry into force of the amendment, or on the date agreed by the Parties."

Canada has used the amendment procedures in its FTAs to make amendments. To give a recent example, in September 2013, Canada and Chile reached an agreement to amend the Canada-Chile FTA in order to add a chapter on financial services and make updates to the customs procedures, government procurement and dispute settlement chapters. The Article on Amendments in the Canada-Chile FTA is P-02, and it provides "1. The Parties may agree on any modification of or addition to this Agreement. 2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement." More information on this amendment is available at http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/amend1.aspx?lang=eng. While these amendments did not specifically relate to the investment provisions of the FTA, the same procedures would have applied to such amendments.

For the most part, Canada's IIAs provide for amendments to be effective on a date agreed to by the Parties or once the respective legal procedures have been completed and appropriate notifications exchanged (see examples provided above). However, the IIA between Canada and Egypt provides in Article XVII:

> "(2) This Agreement shall remain in force for a period of 15 years and thereafter shall continue in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles I to XVII inclusive of this Agreement shall remain in force for a period of fifteen years.
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> (3)(a) This Agreement may be amended or modified with the agreement, in writing, of the Contracting Parties. (b) Any amendment or modification of this Agreement shall enter into force in accordance with the procedure set out in paragraph (2) above."

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

Under the Canadian federal system, the recognition and enforcement of foreign civil judgments, including judgments on commercial matters, generally falls under the legislative authority of the provinces and territories.

Recognition and enforcement of such judgments may be sought under legislation, where such legislation has been adopted (for example, under the Civil Code of Québec, the Saskatchewan Enforcement of Foreign Judgments Act, the British Columbia Court Order Enforcement Act, or the New Brunswick Foreign Judgments Act). As the legislation is not uniform across Canada, requirements may vary from one jurisdiction to another.

Legislation in all jurisdictions except in Québec also provides for recognition and enforcement under the 1984 Convention between Canada and the United Kingdom of Great Britain and Northern Ireland providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters.

Recognition and enforcement of foreign civil judgments may also be sought at common law (except in Québec), that is, in accordance with norms established by Canadian courts. At common law, the basic requirement for recognizing and enforcing a foreign civil judgment is the existence of a real and substantial

connection between the court that rendered the judgment and the subject matter giving rise to the claim or the defendant.

We are not aware of any cases where a Canadian court has been asked to recognize and enforce the judgment of an "international" tribunal (i.e., one created by treaty such as the Caribbean Court of Justice or the CJEU).

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

Canada's domestic legislation on international arbitration does not contain provisions allowing for an appeal against arbitral awards.

Question 8: Any comments regarding the possible options for reform of the investor-State arbitration regime discussed in the CIDS research paper

Canada is currently exploring the possibility of establishing a multilateral mechanism for the resolution of investment disputes between investors and States as a way of addressing concerns about the legitimacy of the adjudication process and to improve the quality and consistency of awards. Canada is presently engaging in consultations with respect to the multilateral mechanism, its design and implementation, and the way forward.

35. Côte d'Ivoire

[Original: French]
[Date: 21 March 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

Côte d'Ivoire has concluded several agreements, including tax agreements. The international tax agreements are designed to eliminate double taxation which would result from each of the States concerned applying its own tax laws with respect to income, registration fees, stamp duty and, in some instances, inheritance, and to protect and encourage investments on a reciprocal basis. These agreements do not include provisions on the settlement of investor-State disputes.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

Côte d'Ivoire is a party to the Treaty on the Harmonization of Business Law in Africa (OHADA), signed in Port Louis on 17 October 1993. Strictly speaking, the Treaty is not an IIA and the Common Court of Justice and Arbitration that it establishes is not a court for the settlement of investor-State disputes. However, they could, arguably, be considered as such.

In its preamble, the treaty seeks, inter alia, to restore the legal and judicial security of economic activities in order to ensure investor confidence and facilitate interaction between the States Parties. These are all elements which form the fundamental principle of IIAs. The treaty provides for uniform acts which are rules that are common, simple, modern, tailored to the economic situation, directly applicable and binding in States Parties, notwithstanding any prior or subsequent contrary provision of domestic law.

The Common Court of Justice and Arbitration (CCJA) acts as the court of cassation, in place of National Courts of Cassation, in all uniform law disputes. Cases may be brought to the court by a party to proceedings before a national court or by referral through a national court itself. This also includes cases between private investors and a State in the third instance, in other words: an appeal in cassation. This permanent court is therefore not intended solely to settle disputes between member States and investors, but it may do so.

Decree No. 84-447 of 22 March 1984 on agreements for the promotion and mutual guarantee of investments provides for a model IIA. Article 1 stipulates that the Minister of Economy and Finance and the Minister for Foreign Affairs are authorized to negotiate and sign with States, upon request, agreements for the promotion and mutual guarantee of investments within the scope of the provisions of the framework agreement for the promotion and mutual guarantee of investments, which is an annex to the decree.

This model provides, for example in the case of expropriation in the public interest, for parties (investors and States) to have recourse to the International Centre for Settlement of Investment Disputes (ICSID) if the panel of experts charged with considering a case has not communicated its decision within three months.

Several investor-State agreements do in fact include provisions for recourse to the ICSID.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

There are currently no provisions within Côte d'Ivoire's legal system, in IIAs or the model IIA, whereby investor-State arbitral awards may be subject to appeal (as distinguished from annulment).

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

On the issue of IIAs concluded by Côte d'Ivoire or the current model IIA which address the possible creation in the future of: (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court, Côte d'Ivoire has not yet taken any concrete steps in these matters.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

Regarding whether IIAs to which Côte d'Ivoire is a party contain provisions on their amendment, this is not yet the case.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

There is a statutory basis or judicial mechanism in Côte d'Ivoire for recognizing and enforcing judgments of international courts (as opposed to arbitral awards).

The Code of Civil, Commercial and Administrative Procedure provides for enforcement proceedings.

Article 345 stipulates that judicial decisions, whether contentious or non-contentious, made in a foreign country cannot be enforced or made public in the Republic until they have been declared enforceable, subject to special provisions resulting from international agreements. This allows for an exception to be made, in order to adhere to treaties providing for the application of international standards and their direct execution, which overrides all other forms of proceedings. This applies, for example, to the judgments of the WAEMU (West African Economic and Monetary Union) Court of Justice, which are mandatory for member countries, including Côte d'Ivoire, under article 20 of Additional Protocol No. 1 and article 57 of the Rules of Procedure. Even if the court has not yet ruled on the execution of its decisions without an enforcement order, this should be possible and in accordance with national procedures.

The Ivorian courts have already implemented decisions of international courts, in accordance with Côte d'Ivoire's observance of its international commitments.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

Ivorian legislation on international arbitration does not contain any specific provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards.

Question 8: Any comments regarding the possible options for reform of the investor-State arbitration regime discussed in the CIDS research paper

The reform proposed by the CIDS would be welcome to the extent that it seeks to address weaknesses or legal loopholes regarding the settlement of investor-State disputes in the States targeted. It could thus seek to establish links with existing systems in order to avoid contravening the principles of State sovereignty and Community law.

36. El Salvador

[Original: Spanish]
[Dates: 30 January and 13 February 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

El Salvador is a party to both free trade agreements and bilateral investment treaties containing chapters on investment protection.

It is worth mentioning that there are currently around 19 bilateral investment treaties in force in El Salvador, which are available at http://www.sice.oas.org/ctyindex/SLV/SLVBITS_e.asp and which contain provisions on the settlement of investor-State disputes.

There are also nine trade agreements in force in El Salvador. However, only six of those trade agreements, listed below, contain chapters relating to the protection of investors and provisions on the settlement of investor-State disputes:

- Free trade agreement with Chile, chapter 10
- Free trade agreement between Central America and Mexico, chapter 11
- Free trade agreement with Taiwan Province of China, chapter 10
- Free trade agreement with Panama, chapter 10
- Free trade agreement with Colombia, chapter 12
- Free trade agreement with the United States of America, chapter 10.

As mentioned, El Salvador is a State party to bilateral investment treaties and free trade agreements containing chapters on investment protection. In both cases, the agreements include provisions on the settlement of investor-State disputes. The Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), for example, contains a specific chapter governing investment (see chapter 10, section B, of the Agreement). At the bilateral level, the Agreement on the Promotion and Reciprocal Protection of Investments between El Salvador and Uruguay also illustrates the procedure that has been established for the settlement of disputes between the Government and an investor (see article 9).

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

No, all the trade agreements concluded by El Salvador that provide for the settlement of investor-State disputes contain provisions for the settlement of such disputes by international arbitration: primarily ad hoc arbitral tribunals constituted

under the rules of the International Centre for the Settlement of Investment Disputes or the rules of the United Nations Commission on International Trade Law.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

Only the Dominican Republic — Central America — United States Free Trade Agreement (CAFTA-DR) provides, in annex 10-F of the Agreement, for the possible development in the future of an appellate mechanism or similar body to review awards rendered by tribunals in accordance with chapter 10 of the Agreement, relating to investment.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

Annex 10-F of the Dominican Republic — Central America — United States Free Trade Agreement addresses the possible development by the parties to the Agreement of provisions intended to establish an appellate body within the framework of the Agreement. To date, the parties to the Agreement have not agreed on actions for the development of that mechanism.

The text of the above-mentioned annex expressly provides as follows:

> "1. Within three months of the date of entry into force of this Agreement, the Commission shall establish a Negotiating Group to develop an appellate body or similar mechanism to review awards rendered by tribunals under this Chapter. Such appellate body or similar mechanism shall be designed to provide coherence to the interpretation of investment provisions in the Agreement. The Commission shall direct the Negotiating Group to take into account the following issues, among others: (a) the nature and composition of an appellate body or similar mechanism; (b) the applicable scope and standard of review; (c) transparency of proceedings of an appellate body or similar mechanism; (d) the effect of decisions by an appellate body or similar mechanism; (e) the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under Articles 10.16 and 10.25; and (f) the relationship of review by an appellate body or similar mechanism to existing domestic laws and international law on the enforcement of arbitral awards.
>
> 2. The Commission shall direct the Negotiating Group to provide to the Commission, within one year of establishment of the Negotiating Group, a draft amendment to the Agreement that establishes an appellate body or similar mechanism. On approval of the draft amendment by the Parties, in accordance with Article 22.2 (Amendments), the Agreement shall be so amended."

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

The majority of the agreements concluded by El Salvador provide for the "termination or denunciation" of the agreement by one of the contracting parties. Typically, that termination is not immediate, but rather a time frame is established for the termination to take effect.

As a mechanism for protecting investments, it is established that those investments made prior to the termination of agreements shall continue to be covered for a certain period following termination or denunciation.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

In El Salvador, the applicable legislation for the recognition and enforcement of judgments of international courts is the Code of Civil and Commercial Procedure,

article 555 of which provides as follows: “Foreign instruments — Art. 555. — Final judgments and other final decisions delivered by foreign courts, and foreign arbitral awards recognized in El Salvador are also enforceable instruments. Such instruments shall be enforceable under the terms indicated by international multilateral treaties, provisions governing international legal cooperation or agreements concluded with the country in which the instruments were issued. Once the foreign instrument has been recognized, it shall be enforced in accordance with the rules of compulsory enforcement set out in this Code, unless international agreements provide otherwise.”

There is both a statutory basis and a judicial mechanism for the recognition and enforcement of judgments rendered by international courts or tribunals. The Constitution of El Salvador and the Code of Civil and Commercial Procedure recognize the power of those courts and tribunals to render judgments in cases under their jurisdiction.

The procedure for recognizing foreign instruments is established in article 558 of the aforementioned Code. In accordance with article 562 of the Code, the court of first instance with jurisdiction over the place of domicile of the judgment debtor is competent to enforce any such instruments. If the judgment debtor does not reside in El Salvador, the courts of first instance of the place in which the property that should be surrendered is located, or the place chosen by the judgment creditor owing to the fact that the property that should be surrendered is located there, have jurisdiction.

If there is no international treaty recognizing foreign instruments as enforceable instruments in El Salvador, article 556 of the Code of Civil and Commercial Procedure establishes the procedure to be followed in order to obtain that recognition: “Art. 556: Where there are no international treaties or provisions applicable to the recognition of a foreign instrument as an enforceable instrument in El Salvador, such recognition may be granted if at least one of the following requirements is met: 1. The judgment, which has the effect of res judicata in the State in which it has been delivered, has been rendered by a competent court in accordance with the provisions of El Salvador regarding international jurisdiction. 2. The respondent against whom enforcement is sought has been duly summoned, even if that respondent has been declared in contempt of court, provided that the respondent’s right to defend itself has been guaranteed and it has been served with the decision. 3. The judgment fulfils the elements required in order for it to be regarded as enforceable in the place in which it was rendered, and meets the conditions of authenticity required by national law.”

The judgment shall not affect the constitutional principles or the public policy principles of the law of El Salvador, and the fulfilment of the obligation it entails should be lawful in El Salvador.

There are no ongoing proceedings in El Salvador, nor has an enforceable judgment with the effect of res judicata been issued by a court of El Salvador.

In El Salvador, the procedure for the enforcement of foreign instruments is known as a writ of *pareatis* or *exequatur*, which is governed by civil and commercial procedural legislation. In that regard, the Supreme Court is the authority that is competent to grant, in accordance with the law and where necessary, the enforcement of judgments of foreign courts in any part of El Salvador. On that basis, the Code of Civil and Commercial Procedure recognizes foreign final legal decisions as enforceable instruments, and makes them enforceable, on the basis of the provisions of international multilateral treaties, provisions on international legal cooperation or agreements concluded with the country in which the instruments were issued.

In El Salvador, domestic courts have been requested to recognize or enforce judgments of international courts, particularly in relation to judgments rendered by the Inter-American Court of Human Rights in cases against El Salvador. Similarly,

at the national level, a judgment rendered by the International Court of Justice in relation to a frontier dispute has been enforced, while at the regional level a judgment rendered by the Central American Court of Justice has also been enforced.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

Article 3 (h) of the Mediation, Conciliation and Arbitration Act of El Salvador provides for four different kinds of arbitration: ad hoc, institutional, international and foreign, and considers arbitration to be international in any of the following cases: 1. When the parties to an arbitration agreement are domiciled in different States at the time of conclusion of that agreement. 2. If one of the following places is located outside the State in which the parties are domiciled: (a) The place of arbitration, whether this has been expressly established in the arbitration agreement, or in accordance therewith; (b) The place where a substantial part of the obligations of the legal relationship is to be performed or the place with which the subject matter of the dispute is most closely connected. For the purposes of this subparagraph, if a party has more than one domicile, the domicile will be that which is most closely connected to the arbitration agreement; if a party does not have a domicile, reference is to be made to the party's residence.

A Foreign Arbitration is an arbitration in which the arbitral award has not been delivered in El Salvador.

In that regard, article 66-A of the Act provides for the possibility of submitting an appeal against an arbitral award delivered in arbitration proceedings, with suspensive effect, within seven working days of notice of the award or of the order through which clarification, corrections or additional information are provided, before the second-instance chamber with jurisdiction over civil cases in the place of domicile of the respondent or, in the case of more than one respondent, the place of domicile of any one of those respondents.

Legislative Decree No. 914 of 2002 establishes the Mediation, Conciliation and Arbitration Act, which lays down the applicable legal regime with regard to arbitration, without prejudice to the provisions of international treaties or conventions currently in force. Article 66-A recognizes the possibility of submitting appeals against arbitral awards delivered by national courts or tribunals: "An arbitral award delivered in arbitration proceedings may be appealed against with suspensive effect, within seven working days of notice of the award or of the order through which clarification, corrections or additional information are provided, before the second-instance chamber with jurisdiction over civil cases in the place of domicile of the respondent or, in the case of more than one respondent, the place of domicile of any one of those respondents. With regard to all other aspects, the processing of appeals shall be subject to the provisions of ordinary law. No appeals may be made against the decision of the second-instance chamber."

37. India

[Original: English]
[Date: 28 April 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

India inked Bilateral Investment Promotion and Protection Agreements (BIPPAs)/ BITs with 83 countries since 1994. However, India unilaterally abrogated the said BIPPAs/BITs with 43 of the said 73 countries with whom the initial duration of 10/15 years of the said agreements was already over and which allowed for such a termination as per the decision of the Government of India to this effect. With respect to the remaining countries, a request of a Joint Interpretative Statement was

issued. The erstwhile BIPPAs/BITs with these countries which are still alive would be terminated at the expiry of the initial duration. Currently, India is in the process of renegotiating with partner countries on new BITs based on India's new model text. India is also a signatory to FTAs with many partner countries. India's BITs and model BIT do contain provisions on settlement of Investor State Disputes.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

None of the IIAs nor the Model BIT provide for permanent courts or tribunals as such.

However, under Article 29 of India's new model BIT, it does mention about developing an institutional mechanism with an appellate body in future for investment treaty disputes.

Article 29 of India's new Model BIT reads as follows:

Article 29

Appeals Facility

The Parties may by agreement or after the completion of their respective procedures regarding the enforcement of this Treaty may establish an institutional mechanism* to develop an appellate body or similar mechanism to review awards rendered by tribunals under this chapter. Such appellate body or similar mechanism may be designed to provide coherence to the interpretation of provisions in this Treaty. In developing such a mechanism, the Parties may take into account the following issues, among others:

(a) the nature and composition of an appellate body or similar mechanism;

(b) the scope and standard of review of such an appellate body;

(c) transparency of proceedings of the appellate body;

(d) the effect of decisions by an appellate body or similar mechanism;

(e) the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under Articles 20.1 of this Treaty; and

(f) the relationship of review by an appellate body or similar mechanism to existing domestic laws and international law on the enforcement of arbitral awards.

*This may include an appellate mechanism for reviewing investor-state disputes established under a separate multilateral agreement in future.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

Article 29 as quoted in the answer to question 2 describes about appeals facility. Ongoing negotiations are on the basis of this new model BIT.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

India's model BIT text does envisage the creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court. Article 29 as quoted in the above answers includes reference to a mechanism in future under a multilateral agreement.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

(a) There are explicit provisions for amendment of an IIA in existing BITs and India's model text. The exact text of the provisions regarding amendments in the model BIT is as follows:

Article 37

Amendments

1. This Treaty may be amended at any time at the request of either Party. The requesting Party must submit its request in written form explaining the grounds on which the amendment shall be made. The other Party shall consult with the requesting Party regarding the proposed amendment and must also respond to the request in writing.

1. This Treaty will stand automatically amended at all times to the extent that the Parties agree. Any agreement to amend the treaty pursuant to this Article must be expressed in writing, whether in a single written instrument or through an exchange of diplomatic notes. These amendments shall be binding on the tribunals constituted under Chapter IV or Chapter V of this Treaty and a tribunal award must be consistent with all amendments to this Treaty."

(b) There are no instances of such an amendment in any case of a BIT between India and a partner country.

(c) India's model BIT text or any of the BITs concluded by India so far do not contain provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

No.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

The legislation does provide for challenge of awards on certain grounds, however, the legislation does not specify an appeal before another arbitration tribunal.

However, the Supreme Court of India recently in Centrotrade Minerals & Metal vs. Hindustan Copper Ltd, held that parties may provide for appeal in the arbitration agreement.

In this case the first award was under an arbitration administered by ICA (Indian Council of Arbitration) the aggrieved party then by means of an appeal as provided in the agreement brought about the subsequent appellate arbitration seated in London under ICC Rules.

Question 8: Any comments regarding the possible options for reform of the investor-State arbitration regime discussed in the CIDS research paper

It is important to start with a blank canvas to devise a more fair, a more legitimate, and a more self-contained system of ISDS with internal checks and balances to ensure a good quality of decision-making. This new system of dispute resolution should also be one which can seamlessly be merged into the current landscape of enforcement of decisions — with possibly one or two tweaks to facilitate better and quicker enforcement.

One of the most critical areas in designing a permanent investment court relates to its composition, structure and certainty.

One of the drawbacks of the current landscape of BIT arbitrations is the number of inconsistent or even contradictory awards — for instance, on the proper interpretation of umbrella clauses, the effect of an MFN clause, whether the FET standard only requires the minimum standard under CIL or if it is more expansive. Critics have also pointed to the CME and Lauder cases against the Czech Republic where the same facts led to two different decisions by two arbitral tribunals.

The legal and practical challenges to establishing a world investment court should not be underestimated. These have been quite exhaustively dealt with in the CIDS analysis. It is also a welcome to have an opt in clause unlike in the Mauritius Convention where India had raised the issue with the opt out clause.

India welcomes the move to have discussions and deliberations on the proposal, and further comments could be provided in due course.