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Settlement of commercial disputes

Investor-State Dispute Settlement Framework

Compilation of comments

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38. Israel

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A/International Investment Agreements (IIAs)

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

Yes, both BITs and FTAs. ISDS provisions are included.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs — Question 3: Provisions on appeal to investor-State arbitral awards in IIAs — 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

No.

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

Yes, some IIAs concluded by Israel contain provisions on the amendment of the IIAs. These provisions were never used. Most of Israel's IIAs include a provision protecting investors' rights in the case of termination of the IIA ("sun-set" provision).

Examples of Israel's amendment provisions:

Israel — Ukraine (signed: 2010; in force: 2012)

Article 14 Amendment of the Agreement

Changes and amendments to this Agreement shall be made by mutual written consent of the Contracting Parties and be formed in Protocols, which constitute its integral part and shall into force in accordance with Article 16 of this Agreement.

Israel — Turkey (signed: 1996; in force 1998)

Article 14 Duration and Termination

[...] This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other that it has completed all its internal requirements for the entry into force of such amendment. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 10 years after the date of termination.

Israel — Lithuania (signed: 1994; in force: 1996)

Article 13 Amendments

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force pursuant to the terms of Article 14.

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 applicable legislation provides that enforcement of foreign arbitral awards is done in accordance with an applicable treaty to which Israel is a party (if the award is subject to such a treaty) (Article 29A, Arbitration Law — 1958). There are no statutory provisions allowing for direct appeal against foreign awards.

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

Israel believes UNCITRAL could be one of several appropriate global forums for discussing tools in relation to a permanent investment court and an appeal mechanism, due to the opportunities this can provide for smaller Member States from various geographic locations to participate in the discussions. As an initial stage, discussions in a Working Group on the topic could focus on clarifications of the proposals suggested in the CIDS paper. This could facilitate a common understating of the specifics of the options before the UNCITRAL member states in order to decide which of the approaches suggested has more potential of ultimately gaining consensus and resulting in a concrete outcome. Such a direction could also facilitate subsequent focused deliberations on the challenges and obstacles and identification of means to resolve them.

Israel stresses, however, that its support for continuation of work in this area does not imply support for the idea of a permanent court or an appellate mechanism, nor does it mean that Israel will join a Convention on this issue if such a Convention is finalized.
