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Settlement of commercial disputes

Investor-State Dispute Settlement Framework

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39. Republic of Korea

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A/International Investment Agreements (IIAs)

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

As of December 31, 2016, the Republic of Korea has signed 95 bilateral investment treaties (BITs) among which 87 agreements are in effect. The Republic of Korea is a signatory to 15 Free Trade Agreements (FTAs).

As for BITs, 83 agreements out of 87 which are in effect contain provisions on the settlement of investor-State disputes. Four agreements that do not contain such provisions are Korea-German BIT, Korea-France BIT, Korea-Pakistan BIT and Korea-Bangladesh BIT.

As for FTAs, 14 agreements contain provisions on the settlement of investor-State disputes except for Korea-EU FTA.

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

As of December 31, 2016, no IIA to which the Republic of Korea is a party includes (i) any provision on permanent courts or tribunals; and (ii) any provision whereby investor-State arbitral awards may be subject to appeal.

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

Four FTAs, the Korea-United States FTA, the Korea-Australia FTA, the Korea-Canada FTA and the Korea-New Zealand FTA, contain provisions addressing the possible future creation of a bilateral or similar appellate mechanism to review investment treaty arbitral awards.

The texts are provided in the following:

The Korea-United States FTA, Chapter 11 (Investment), Annex 11-D Possibility of a bilateral appellate mechanism

“Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 11.26 in arbitrations commenced after they establish the appellate body or similar mechanism.”

(signed on June 30, 2007; date of entry into force: March 15, 2012)

The Korea-Australia FTA, Chapter 11 (Investment), Article 11.20 Conduct of the arbitration

“13. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for the purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 11.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.”

-Annex 11-E, Possibility of a bilateral appellate mechanism

“Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar

mechanism to review awards rendered under Article 11.26 in arbitrations commenced after they establish the appellate body or similar mechanism.”

(signed on April 8, 2014; date of entry into force: December 12, 2014)

The Korea-Canada FTA, Chapter 8, Annex 8-E, Possibility of a bilateral appellate mechanism

“Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish an appellate body or similar mechanism to review awards rendered under Article 8.24 in arbitrations commenced after they establish the appellate body or similar mechanism.”

(signed on September 22, 2014; date of entry into force: January 1, 2015)

The Korea-New Zealand FTA, Article 10.26 Conduct of the arbitration

“9. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for the purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review decisions and awards rendered under this Article and Article 10.30 in arbitrations commenced after the multilateral agreement enters into force between the Parties.”

(signed on March 23, 2015; date of entry into force: December 20, 2015)

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

As for BITs, 25 agreements out of 87 which are in effect contain provisions on the amendment of the BITs. As for FTAs, all agreements signed contain provisions on the amendment of the FTAs. As of December 31, 2016, no IIA to which the Republic of Korea is a party includes any provision 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)

Article 6, Paragraph 1 of the Constitution of the Republic of Korea provides that, “Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.” Therefore, if there are treaties or conventions regarding recognition and/or enforcement of international court judgments, they can so be recognized and enforced accordingly.

Apart from that, there are no specific legal provisions or judicial organizations in the Korean legal system that deal with such recognition and/or enforcement of judgments delivered by “international courts”.

However, we do have provisions on the recognition and enforcement of judgments rendered by foreign courts, where the recognition and enforcement procedures are carried out not by international courts but by domestic courts, as provided in Article 217 of the Civil Procedure Act and Article 26 and 27 of the Civil Execution Act.

For your information, there have not been any known cases whereupon Korean domestic courts were requested to recognize or to enforce a judgment from an “international court”.

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

In the Korean law system, the Arbitration Act stipulates on international arbitration. However, it does not contain any provisions on appeal by State courts or arbitral tribunals against arbitral awards.
