

GAR INVESTMENT TREATY ARBITRATION

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# South Korea

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## Overview of investment treaty programme

### 1 What are the key features of the investment treaties to which this country is a party?

#### (a) BITs/MITs

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Albania (15 December 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Algeria (30 September 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Argentina (24 September 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Armenia (3 October 2019)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Austria (1 November 1991)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Azerbaijan (25 January 2008)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bangladesh (6 October 1988)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Belarus (9 August 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Belgium-Luxembourg Economic Union (3 September 1976)	Yes	Yes	Yes	Yes	No	None	Yes	Yes
Bolivia (4 June 1997) (terminated 4 June 2019)	Yes	Yes	No	Yes	Yes	6 months	Yes	Yes
Brazil (not in force, text not publicly released)								
Brunei (30 October 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bulgaria (16 November 2006)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Burkina Faso (14 April 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Cambodia (12 March 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Cameroon (13 April 2018)								
Colombia (not in force, text not publicly released)								
China (1 December 2007)	Yes	Yes	Yes	Yes	Yes	4 months	Yes	Yes
China–Japan (17 May 2014)	Yes	Yes	Yes	Yes	Yes	4 months	Yes	Yes
Congo (13 August 2011)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Congo (not in force, text not publicly released)								

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Costa Rica (25 August 2002)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Croatia (31 May 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Czech Republic (16 March 1995)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Denmark (2 June 1988)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Dominican Republic (21 May 2008)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Egypt (25 May 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
El Salvador (25 May 2002)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Finland (11 May 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
France (1 February 1979)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Germany (15 January 1967)	Yes	Yes	Yes	Yes	Yes	None	No	Yes
Greece (4 November 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Guatemala (17 August 2002)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Guyana (20 August 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Honduras (19 July 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Hong Kong (30 July 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Hungary (1 January 1989)	Yes	No	Yes	Yes	No	6 months	Yes	Yes
India (terminated 12 May 2017)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Indonesia (10 March 1994)	Yes	Yes	Yes	Yes	No	12 months	Yes	Yes
Iran (31 March 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Israel (19 June 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Italy (26 June 1992)	Yes	Yes	No	Yes	No	6 months	No	Yes
Jamaica (5 November 2007)	Yes	Yes	Yes	Yes	Yes	9 months	Yes	Yes
Japan (1 January 2003)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Jordan (25 December 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Kazakhstan (26 December 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Kenya (3 May 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Kuwait (31 August 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Kyrgyzstan (8 July 2008)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Laos (14 June 1996)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Latvia (26 January 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Lebanon (21 December 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Libya (28 March 2007)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Lithuania (9 November 1993)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malaysia (31 March 1989)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Mauritania (21 July 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mauritius (7 March 2008)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mexico (27 June 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mongolia (30 April 1991)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Morocco (8 May 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Myanmar (31 October 2018)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Netherlands (1 March 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Nicaragua (22 June 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Nigeria (1 February 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Oman (10 February 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Pakistan (15 April 1990)	Yes	Yes	Yes	Yes	Yes	None	No	No
Panama (8 February 2002)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Paraguay (6 August 1993)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Philippines (25 September 1996)	No	Yes	No	Yes	No	3 months	Yes	Yes
Poland (2 February 1990)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Portugal (11 August 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Qatar (16 May 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Romania (11 January 2008)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Russia (10 July 1991)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Rwanda (16 February 2013)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Saudi Arabia (19 February 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Senegal (2 September 1985)	Yes	Yes	No	Yes	No	6 months	No	Yes
Slovak Republic (7 February 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
South Africa (6 June 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Spain (19 July 1994)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Sri Lanka (15 July 1980)	Yes	Yes	Yes	Yes	No	12 months	Yes	Yes
Sweden (18 June 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Tajikistan (13 August 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Tanzania (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Thailand (30 September 1989)	Yes	Yes	Yes	Yes	Yes	6 months	No	No
Trinidad and Tobago (27 November 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Tunisia (28 November 1975)	Yes	Yes	Yes	Yes	No	None	No	Yes
Ukraine (3 November 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
United Arab Emirates (15 June 2004)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Kingdom (4 March 1976)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Uruguay (8 December 2011)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uzbekistan (20 November 1992)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Vietnam (5 June 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Zimbabwe (not in force, text not publicly released)								
ASEAN (1 June 2007)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Australia (12 December 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Canada (1 January 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Republics of Central America FTA (1 October 2019)	Yes	Yes	Yes	Yes	No	8 months	Yes	Yes
Chile (1 April 2004)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
China (20 December 2015)	Yes	Yes	Yes	Yes	No	4 months	Yes	Yes
Colombia (15 July 2016)	Yes	Yes	Yes	Yes	No	8 months	Yes	Yes
EFTA (10 January 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
European Union (1 July 2011)	No	No	No	Yes	No	None	No	No
India CEPA (1 January 2010)	Yes	Yes	Yes	No	No	6 months	Yes	Yes
Indonesia CEPA (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
New Zealand (20 December 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Peru (1 August 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Singapore (2 March 2006)	Yes	Yes	Yes	No	No	6 months	Yes	Yes
Turkey (1 August 2018)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United States (15 March 2012)	Yes	Yes	Yes	Yes	No <sup>1</sup>	6 months	Yes	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Vietnam (20 December 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

## Qualifying criteria - any unique or distinguishing features?

### 2 What are the distinguishing features of the definition of “investor” in this country’s investment treaties?

Issue	Distinguishing features in relation to the definition of ‘investor’
General definition	<p>In the majority of Korea’s investment treaties, the term ‘investor’ is defined broadly as ‘any natural or juridical persons of either Contracting Party who invest in the territory of the other Contracting Party’.</p> <p>The Kuwait BIT includes in the definition of ‘investor’ the ‘Government of that Contracting Party’, meaning that even government agencies that invest in the other contracting party will be protected by the terms of the BIT.</p>
Natural persons	<p>The term ‘natural persons’ is usually defined to mean natural persons having the nationality of the relevant contracting party in accordance with its laws. However, the ASEAN FTA extends the definition of ‘natural persons’ to include not only those possessing the nationality or citizenship of the relevant contracting party, but also those possessing the ‘right of permanent residence’.</p>
Dual nationals	<p>Some of Korea’s investment treaties provide that a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her ‘dominant and effective nationality’ (eg, Rwanda BIT, Australia, Canada, Colombia, United States and New Zealand FTAs).</p>
Juridical persons	<p>The term ‘juridical persons’ is usually defined to mean any entity that conducts economic activities such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organisations, corporations or associations incorporated or constituted in accordance with the laws and regulations of the relevant contracting party.</p> <p>Korea’s investment treaties generally extend protection to all types of juridical persons, regardless of whether the company has limited liability, non-profit status, or whether the company is government-owned or privately owned (eg, Malaysia, the Philippines, Saudi Arabia, South Africa BITs, ASEAN, China FTAs and India CEPA).</p>
Business/economic activities	<p>The Iran BIT limits the scope of juridical persons to those whose ‘headquarters or their real economic activities are located in the territory of that Contracting Party’. Similarly, some FTAs (eg, EFTA, India CEPA, New Zealand) and BITs (Japan, Dominican Republic, Greece, Turkey, the Philippines and UK BITs) require that a juridical person should be carrying out ‘substantial business activities’ within a party to be considered as an investor of that party.</p>
Denial of benefits	<p>Many of Korea’s FTAs provide the parties with discretion to deny protection to juridical persons of the other party, in cases such as where they are owned or controlled by a non-party, and:</p> <ul style="list-style-type: none"> <li>• the denying party does not maintain normal economic relations with the non-party (eg, China, United States FTAs); or</li> <li>• the denying party adopts or maintains measures with respect to the non-party that prohibit transactions with the enterprise (eg, Australia, Canada, Colombia and United States FTAs); or</li> <li>• the enterprise has no substantive business operations in the territory of the other party (eg, Australia, Canada, Colombia, New Zealand, Peru, United States FTAs and India CEPA).</li> </ul> <p>Before Lone Star filed an investor-state dispute (ISD) against Korea, only the Korea–Japan BIT contained a denial of benefits clause. However, following the Lone Star dispute, which culminated in the second ISD suit in December 2014, Korea now includes the denial of benefits clause in all BITs (eg, Uruguay, Kenya BITs and Korea–Japan–China TIT) at the request of the National Assembly.</p>



### 3 What are the distinguishing features of the definition of "investment" in this country's investment treaties?

Issue	Distinguishing features in relation to the concept of 'investment'
Eligible assets	<p>In Korea's investment treaties, 'investment' is usually defined broadly as 'every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party'. The definition usually also sets forth a non-exclusive list of such assets, including assets such as moveable and immovable property and other property rights, shares or any other form of participation in a company, intellectual property rights, business concessions, etc.</p> <p>Korea's investment treaties generally cover all kinds of investments regardless of the type of investment (direct or indirect investment, portfolio investment, etc). Some BITs expressly include in the definition of 'investment' assets that are 'indirectly' controlled by an investor (eg, Netherlands, Rwanda BITs, Colombia FTA).</p> <p>Some BITs specifically require investments to be 'connected with economic activities' (eg, Hungary, Panama BITs).</p>
Exclusion	<p>Some investment treaties exclude certain activities or assets from the definition of 'investment'. Examples of excluded assets are:</p> <ul style="list-style-type: none"> <li>• a claim to money that arises solely from commercial contracts, unless it is a loan that has the characteristics of an investment (eg, Mexico BIT, ASEAN, Chile, Peru, United States, Vietnam FTAs and India CEPA);</li> <li>• a claim to money that arises solely from the extension of credit in connection with a commercial transaction, such as trade financing (eg, Mexico BIT, ASEAN, Chile, Vietnam FTAs and India CEPA);</li> <li>• market share, market access, expected gains and opportunities for profit-making (eg, Rwanda, Uruguay BITs);</li> <li>• public debt operations (eg, Colombia FTA); and</li> <li>• an order entered in a judicial or administrative action (eg, Colombia FTA).</li> </ul>
Commencement of treaty protection	<p>Many of Korea's investment treaties extend protection to investments made before the entry into force of the relevant treaty (eg, Denmark, Israel, Jamaica, Poland and Rwanda BITs). Meanwhile, some BITs state that the BIT shall apply only to investments that were made after the BIT has entered into force (eg, Lithuania BIT). The treaties never find application on disputes that have arisen prior to their entry into force or disputes directly related to events which occurred prior to its entry into force. Rarely, the treaties indicate the exact date of the commencement of the treaty protection (eg, Czech BIT: 1 January 1950).</p>
Compliance with national laws	<p>Some investment treaties require that the investment must be acquired under the law of the host country of the investment' (eg, Spain BIT) or 'in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made' (eg, Argentina, Belarus, Brunei, Oman, Poland, Romania and Senegal BITs). Here, the laws refer to all national laws in general, and not just those directly related to foreign investment.</p>
Alteration in form	<p>The majority of Korea's BITs and some FTAs contain a provision stating that any change of the form in which assets are invested or reinvested shall not affect their character as an investment. However, some investment treaties note that this is conditioned on the premise that the change in the form of investment should not contradict the laws and regulations of the relevant contracting party (eg, Portugal and Saudi Arabia BITs).</p>
Characteristics of an investment	<p>A few of Korea's BITs (eg, Rwanda, Uruguay BITs, Korea, China and Japan TITs) and all of the FTAs, except the EFTA and the Korea-EU FTA, specifically require that the relevant assets must have the 'characteristics of an investment', such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.</p>
Approval/admission of investment	<p>Some investment treaties specifically require that the investment must be approved by the competent authority of the contracting party in whose territory the investment is made (eg, Bangladesh, Iran, Pakistan and Sri Lanka BITs), or must be granted admission in accordance with the applicable laws of each contracting party (eg, Indonesia, Jamaica BIT and Vietnam FTA).</p>

## Substantive protections - any unique or distinguishing features?

### 4 What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Illustrations of the Fair and Equitable Treatment (FET) standard	<p>The great majority of Korea's BITs and FTAs include assurances for 'fair and equitable treatment' to investments. Similarly, investment-related treaties and instruments such as the Korea–Vietnam FTA, MIGA Convention and the World Bank Investment Guidelines provide for the same standard. Other BITs contain slight variations. For example, the Italy BIT and the Pacific Basin Investment Charter provides for 'equitable and reasonable' treatment. For example, the Italy BIT provided for 'equitable and reasonable' treatment and the Pacific Basin Investment Charter Provided for 'fair and reasonable' treatment.</p>
Relationship with customary international law	<p>Recent Korean International Investment Agreements have begun to stipulate that the FET standard is limited to treatment that is required under customary international law, and does not provide investors with a higher or additional level of treatment.</p> <p>For instance, the recent Rwanda BIT expressly prescribes customary international law as the standard for treatment of investors. Likewise, the recent Uruguay BIT establishes customary international law as the 'minimum standard' of treatment.</p>

### 5 What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Right to regulate for a public purpose	<p>The majority of Korea's BITs and FTAs include the 'public purpose' exception. There are several variations to this exception such as 'public interest' (Congo, Hungary, Morocco and Senegal BITs), 'public utility' (Dominican Republic BIT), 'public benefit' (Germany and Saudi Arabia BITs) and 'public purpose or public necessity' (Guatemala BIT).</p> <p>Some treaties are more specific, (eg, 'in the public interest, public use or in the interest of national defense' (Philippines BIT).) Others cast a wider net by providing for 'public benefit or social interest' (El Salvador BIT).</p> <p>Two BITs are without a public purpose exception (Switzerland and Tunisia BITs).</p>
In accordance with the due process of law/legal procedure	<p>While 'due process' features prominently in Korean BITS and FTAs, it does not appear in a few (eg, Belarus, Senegal, Thailand, United Arab Emirates and the United Kingdom BITs).</p> <p>Some BITs require that the expropriation be carried out 'in accordance with legal procedures' (eg, Albania, Cambodia, Lithuania, Qatar, Slovakia, Tajikistan BITs). Others provide that expropriation should be carried out 'in accordance with its laws' (eg, India, Nigeria, Pakistan, Spain, Turkey BITs). The more specific Finland BIT provides for expropriation 'under due process of law in accordance with a legal procedure of each Contracting Party and international law', while the Tunisia BIT simply refers to international law.</p>
Right to compensation	<p>Except for the China and France BITs, most of Korea's BITs provide for 'prompt, adequate and effective' compensation, with slight variations in the wording. As shown by this wording, most of Korea's BITs adopt the Hull formula, meaning that the investor should be granted, within a reasonable time (prompt), compensation in an amount equal to the fair market value of the expropriated investment (adequate), in a freely transferable and exchangeable currency (effective). The Organisation for Economic Co-operation and Development Convention on the Protection of Foreign Property, APEC Non-Binding Investment Principles, the Korea–Vietnam FTA and Korea–New Zealand FTA also contain the same provision.</p> <p>The Mexico and Netherlands BITs require 'just compensation'.</p> <p>The Pacific Basin Investment Charter requires 'full and prompt settlement'.</p>
Fair market value	<p>Most of Korea's BITs and FTAs calculate the 'market value' or the 'fair market value' of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is earlier.</p> <p>Three treaties consider the 'actual value of the investment expropriated' (Austria, Denmark and France BITs).</p> <p>Provision for the payment of interest is a standard feature in Korea's BITs.</p>

Issue	Distinguishing features of the 'expropriation' standard
Right to review by local court/ competent/ independent authority	Typically, Korea's BITs provide the investor with a 'right to prompt review'. Other instruments such as the Korea–China FTA and the Korea–China–Japan trilateral investment agreement provide the same right. A number of BITs do not mention the right to review (eg, Finland, Iran, Italy, Pakistan, Senegal and Turkey BITs).
Right to arbitration	Most of Korea's BITs contain no express right to arbitration in the event of expropriation. The Austria BIT provides a limited right of review of the amount and payment provisions of compensation. The Pacific Basin Investment Charter allows submission to an 'arbitrator acceptable to both parties' where there is disagreement over the amount of compensation.
Indirect expropriation	All of Korea's BITs except Austria, Germany and Hungary BITs provide protection against indirect expropriation. Likewise, instruments such as the OECD Convention on the Protection of Foreign Property, Korea–China FTA, Korea–India CEPA, Korea–US FTA, Pacific Basin Investment Charter, and the MIGA Convention protect investors against indirect investment. Precise terms range from 'indirect expropriation' (eg, Switzerland, Thailand, Tunisia, Uruguay BITs, Korea–India CEPA and Korea–US FTA), to 'any other measure having similar effect' (Pacific Basin Investment Charter and MIGA Convention).
Expropriation of land	The Korea–Vietnam FTA provides that any measure of expropriation relating to land shall be made 'in accordance with domestic laws and regulations'.

## 6 What are the distinguishing features of the national treatment/most-favoured-nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Scope	Most of Korea's BITs and FTAs include national treatment and MFN provisions. Typically, the equality of treatment applies to investments, returns of investments and investors of the contracting states or third party states, or to the operation, management, maintenance, use, enjoyment or disposal of investments. The Japan BIT extends the application to the 'establishment, acquisition, expansion' of investments, while the Paraguay BIT also applies to 'extension, sale and liquidation' of investments. The Turkey BIT extends coverage to 'management and control over business activities'. The Korea–Australia FTA covers 'establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments'. The Korea–US FTA goes a step further and includes not only national treatment but also the treatment to be accorded by a party with respect to regional levels of government.
Current limitations	Many of Korea's BITs state that the provision of national treatment and MFN status does not extend to the benefits of membership of a customs union, a free trade area, a common market, economic community/union or to taxation agreements, arrangements, legislation or conventions. Many FTAs and the Korea–China–Japan trilateral investment agreement also provide the same, and extend the limitation to any bilateral and multilateral international agreements. However, some FTAs such as with Peru, the US, Turkey, Australia, New Zealand, and Colombia do not have this exception of MFN. The Nicaragua BIT excludes 'deductions, fiscal exemption and any other similar concessions on taxation'.
Limitation on national treatment and MFN	Some of Korea's BITs create specific exceptions to the national treatment and MFN obligations. The Austria BIT provides an exception for any regulation to 'facilitate the frontier traffic'. Similarly, the China and Italy BITs provide an exception for 'frontier trade'. The Guyana BIT reserves a right to grant special incentives to its nationals to 'stimulate the creation and growth of local industries'. The Rwanda BIT provides that national treatment and MFN do not apply to government procurement, subsidies or grants provided by a party, including 'government-supported loans, guarantees and insurance'. The South Africa BIT stipulates that any agreement or arrangement relating to special advantages accorded to the development of financial institutions will be excluded. The Japan BIT provides a long list of exceptions including measures for the protection of essential security interests, measures in time of war, armed conflict or other emergency, measures for non-proliferation of weapons, measures taken for international peace and security, measures necessary to protect human, animal or plant life or health or public order.
Extension of the treatment	Notably, the China BIT expressly provides that national treatment and MFN extends to access to courts, administrative tribunals and authorities both in pursuit and in defence of their rights.

## 7 What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

Issue	Distinguishing features of the 'protection and security' standard
Scope	<p>An overwhelming majority of Korean BITs provide for 'full protection and security' (eg, Argentina, Cambodia, Egypt, Hong Kong, Mexico, Romania, Ukraine and UK BITs). Similarly, it appears in most of Korean FTAs such as the Korea–Vietnam and Korea–US FTA.</p> <p>The precise formula for the protection and security standard varies among the BITs. The Paraguay, Spain, Sri Lanka and Switzerland BITs simply provide for 'protection', while the Belarus BIT, the MIGA Convention and the World Bank Investment Guidelines focus on 'legal protection'.</p> <p>The Iran BIT refers to 'full legal protection and fair treatment'.</p> <p>Other BITs provide a more flexible standard such as 'adequate protection and security' (Indonesia BIT) and 'most constant protection and security' (Bangladesh and Thailand BITs). The Italy and Philippines BITs only contain general provisions on the protection of investments in the preamble to the BITs.</p>
Customary international law on protection and security	<p>The general understanding is that the protection and security standard in Korea's BITs would be limited to the minimum standard of treatment that is required under customary international law, and would not entitle investors/investments to treatment in addition to or beyond that standard. The Rwanda BIT, China–Korea FTA, Korea–New Zealand FTA, Australia–Korea FTA and the Korea–Columbia FTA expressly provide that the concept of 'protection and security' shall be limited to the customary international law minimum standard of treatment, which is the provision of police protection required under customary international law.</p>

## 8 What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

Issue	Distinguishing features of any 'umbrella clause'
Scope	<p>Most of Korea's BITs contain an umbrella clause and reads along the lines of: 'Each Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.' The Iran and Paraguay BITs 'guarantee the observance of the commitments'.</p> <p>A few of Korea's BITs do not include an umbrella clause (eg, Bulgaria, Czech Republic, Egypt, Finland, Malaysia, Philippines, Slovakia, Sweden and UAE BITs).</p>

## 9 What are the other most important substantive rights provided to qualifying investors in this country?

Issue	Other substantive protections
Free transfer of payments	<p>Albeit slight variations in the wording, most of Korea's BITs and FTAs guarantee the free transfer of all payments relating to investments and returns.</p> <p>Many BITs and FTAs guarantee prompt transfer by reference to 'without delay' (eg, China, Greece, HK, Jamaica, Korea–Australia FTA, Korea–Peru FTA and Korea–Turkey FTA, 'without unreasonable delay' (Indonesia BIT), or 'without undue restriction or delay' (eg, Azerbaijan, Burkina Faso, Cost Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Mauritius BITs).</p> <p>The Kuwait BIT stipulates that if there is any delay in effecting the transfer, the investor is entitled to recover interest.</p> <p>Certain BITs condition the free transfer on the right to exercise powers conferred by its laws and consistent with its rights and obligations as a member of the International Monetary Fund (Bangladesh and Lithuania BITs).</p> <p>Others require fulfilment of tax and public fee obligations (Belarus BIT), compliance with tax obligations (Indonesia and Saudi Arabia BITs) or the fulfilment of legal obligations (Mongolia and Romania BITs).</p> <p>Restrictions are found in several BITs. The Sri Lanka and UK BITs provide that free transfer may be restricted in 'exceptional financial or economic circumstances'. The Japan and Mexico BITs may prevent a transfer upon the application of laws relating to bankruptcy, insolvency, protection of creditors' rights, issuing trading or dealing in securities, criminal or penal offences, or ensuring compliance with orders or judgments in adjudicatory proceedings. Similar restrictions appear in several FTAs (Korea–China, Korea–Peru and Korea–Vietnam FTAs).</p> <p>Notably, the Rwanda and Slovakia BITs provide that transfer may be restricted in the event of 'serious balance of payments and external financial difficulties or threat', or in exceptional cases where, movements of capital 'cause or threaten to cause serious difficulties for macroeconomic management', with particular reference to monetary and exchange rate policies.</p> <p>A contracting party may require 'reports of currency transfers' (Indonesia and Jamaica BITs).</p> <p>At least one BIT allows the investor and the contracting party to decide the 'mechanism of repatriation or transfers' (Iran BIT).</p>
Non-impairment	<p>Some of Korea's BITs impose upon the contracting party an obligation not to impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments. The Spain BIT also includes expansion and sale, while the Sweden BIT extends to acquisition of goods and services and sale of their production.</p> <p>The Portugal and Trinidad and Tobago BITs prohibit 'unreasonable, arbitrary or discriminatory measures'.</p> <p>The Greece and Spain BITs prohibit 'unjustifiable or discriminatory measures'.</p> <p>Other BITs do not address impairment separately but treat it as part of national treatment/MFN.</p>
Armed conflict/civil unrest	<p>With the exception of the Austria, Azerbaijan and Switzerland BITs, Korea's investment treaties protect investors against war or other armed conflict, state of national emergency, revolt, insurrection, riot or other similar situations.</p> <p>Likewise, the treaties provide recourse to restitution, indemnification, compensation or other forms of settlement accorded to own investors.</p> <p>The Japan BIT provides an extensive list of permissible measures, including measures in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.</p>

## 10 Do this country's investment treaties exclude liability through carve-outs, non-precluded measures clauses, or denial of benefits clauses?

Issue	Exclusion from liability
Denial of Benefits	<p>Ever since Korea's first investment treaty arbitration case (<i>LSF-KEB Holdings v Korea</i>), which was lodged by a US-based fund through the Belgium–Luxembourg BIT in 2012, Korea has been actively including Denial of Benefits clauses in its BITs (eg, Rwanda, Kenya, Cameroon, Myanmar, Armenia and Zimbabwe). Of course, there are some pre-ISD BITs that do include the denial of benefits clause (eg, Uruguay), but the majority do not.</p>

Issue	Exclusion from liability
Carve-outs and Reservations	<p>Unlike its older treaties, recent Korean BITs are increasingly including various degrees of carve-out clauses. Most common cases include the carve-out of National Treatment and/or Most-Favoured-Nation clauses in case of government procurement, government subsidies, and taxation measures. Some treaties have independent provisions on the general carve-out of taxation measures, but such provisions stipulate that the carve-out on taxation measures do not apply to expropriation claims involving taxation measures. For instance, article 18 of the BIT with Armenia carve-out taxation measures with the exception of cases of expropriation, to which a claimant is required to make first instance referral to the local tax authorities before resorting to investor-state arbitration.</p> <p>In the case of many Korean FTAs, carve-outs are typically done by reservations made in the Annexes and Schedules to the FTA in question, with non-conforming measures clauses in the Investment Chapter that make reference to such reservations. Most of such reservations concern national treatment obligations for specific industry sectors. For instance, the Korea-US FTA schedules include reservations on rice or barley, beef cattle farming (national treatment), air transportation services (national treatment and senior management and boards of directors), telecommunications (national treatment), marine research and maritime mapping (national treatment), outdoor advertisements (performance requirements, senior management and boards of directors), etc.</p>
Exception clauses	<p>Korea's recent BITs are also increasingly adopting exceptions clauses. However, many are security exceptions clauses rather than general exceptions clauses. A typical Korean security exception clause is a self-judging, 'without-prejudice' clause on the state's right to: take necessary measures for the protection of its essential security interests, refuse the furnishing or disclosure of information contrary to its essential security interests, take any action in pursuance of its obligations under the UN Charter for the maintenance of international peace and security.</p> <p>Such securities exception clauses are also commonly incorporated through a separate exceptions chapter in the case of FTAs. Also, in the case of FTAs (eg, Australia, Canada, Singapore, Republics of Central America), such exceptions chapters regularly include general exceptions clauses that also expand to investment (this is not common in the case of BITs). There are exceptions, such as the Korea-US FTA, which only incorporates the securities exception clause and not the general exception clause to the chapter on investment.</p>
Non-precluded measures	<p>As mentioned above, most non-precluded measures take the form of non-conforming measures clauses making reference to reservations in FTAs.</p> <p>A common feature of recent Korean investment treaties is also a clarifications clause for expropriation (usually in the form of a separate annex to BIT or FTA Investment Chapter), which states that except for in rare circumstances, non-discriminatory regulatory measures that are designed to protect legitimate public welfare objectives such as public health, environment, and real estate price stabilisation, are not to be considered to constitute indirect expropriation.</p>

## Procedural rights in this country's investment treaties

### 11 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural rights
Fork-in-the-road	<p>Korea's BITs generally do not include fork-in-the-road provisions. (Exceptionally, some BITs and FTAs such as China, Dominican Republic, Egypt BITs and India CEPA, Colombia FTA, US FTA have fork-in-the-road provisions.) The Malaysia BIT provides that a dispute may be submitted to arbitral proceedings only if the dispute has not already been submitted to the local court, administrative tribunal or agency. Similarly, the Qatar BIT provides that the investor cannot seek international arbitration if the dispute is submitted to court proceedings.</p>
Exhaustion of local remedies / waiver of local remedies	<p>For most of Korea's BITs, the right to commence arbitration is contingent on the exhaustion of local remedies, and typically assigns a six-month time frame to settle amicably. Other BITs have a shorter or longer time frame, such as three months (eg, UK BIT), nine months (eg, Jamaica BIT) or 12 months (eg, Indonesia and Sri Lanka BITs).</p> <p>The Mexico and Vietnam BITs and the Korea-China FTA all provide that the investor must waive the right to initiate a claim under any other dispute settlement procedure before commencing arbitration. The Rwanda BIT also requires the investor to withdraw from any procedures already in progress, while the Korea-Vietnam FTA requires the delivery of the waiver when submitting to arbitration. Interestingly, while the Korea-US FTA also requires the delivery of the waiver when submitting a claim to arbitration under article 11.18.2, an investor of the United States may not submit a claim to arbitration if the investor has alleged a breach of an obligation in any proceedings before a court or administrative tribunal in Korea.</p>

Issue	Procedural rights
Amicable settlement	The vast majority of Korea's BITs require an attempt to reach amicable settlement before resorting to arbitration. This may be achieved through consultation (eg, Belarus and Mauritania BITs), diplomatic channels (eg, China and Albania BITs) or negotiation (eg, Denmark and Switzerland BITs).
Choice of international arbitration fora	ICSID arbitration features prominently in Korea's investment treaties. The majority of Korea's BITs provide a choice between ICSID arbitration, ICSID's Additional Facility arbitration, ad hoc arbitration in accordance with the UNCITRAL Rules, or any other arbitration pursuant to the parties' agreement. The Guyana, Trinidad and Tobago and Lebanon BITs also provide ICC arbitration as an option.
Time limits	Some of Korea's BITs and a handful of FTAs provide a limitation period of three years within which to commence arbitration (eg, Japan, Mexico and Vietnam BITs, and Korea–Singapore, Korea–Columbia, China–Korea and India–Korea FTAs).
Preliminary issues	Some of Korea's BITs stipulate that there is no prejudice to an investor's right to seek injunctive relief before a local court or tribunal (eg, Azerbaijan, Burkina Faso, Dominican Republic, Guyana, Kuwait, Mexico and Rwanda BITs). The Korea–Columbia FTA and the ASEAN–Korea Investment Agreement also contain similar provisions.
Others	The Belarus, Brunei and Nigeria BITs provide that a contracting party cannot raise immunity or payment of compensation under an insurance contract as a defence. The Lebanon BIT provides that the Arbitral Tribunal shall decide the dispute in accordance with applicable rules and principles of international law.

## 12 What is the approach taken in this country's investment treaties to standing dispute resolution bodies, bilateral or multilateral?

Korea's investment treaties take no specific position in regard to standing dispute resolution bodies, and they are rarely if ever mentioned at all. Korea also has yet to declare its position on the issue in the UNCITRAL Working Group III. The Korea–US and Korea–Canada FTA Investment Chapters in their annexes do have provisions which state that, within three years after entry into force, the parties shall consider whether to establish a standing appellate body or similar mechanism that may review arbitration awards rendered by ad hoc arbitration tribunals. However, this only concerns the possibility of introducing appellate mechanisms, and does not seek to substitute the current arbitration-based dispute resolution process for a standing body. The discussion for introducing appellate mechanisms in the case of these two FTAs also has yet to gain any traction.

## 13 What is the status of this country's investment treaties?

Korea's investment treaties are fully in force, except Tanzania, Congo DR, Zimbabwe, Brazil, Columbia and Myanmar BITs, and Korea remains open to negotiating new investment treaties.

## Practicalities of commencing an investment treaty claim against this country

### 14 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	Investment treaties that identify the agency to which a notice of dispute should be served (eg, Australia, Canada FTAs) stipulate that the Office of International Legal Affairs, Ministry of Justice of the Republic of Korea is the government entity to which such notices should be delivered.
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### 15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	The International Dispute Settlement Division of the Ministry of Justice manages investment arbitrations on behalf of Korea. A intra-governmental joint task force under the auspices of the Ministry of Justice also plays a supervisory role. The joint task force consists of standing representatives from the Office of the Prime Minister, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Trade and the Ministry of Justice, along with ad hoc members for each individual case from government agencies or local governments relevant to the measure in dispute.
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- 16 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

## Internal/external counsel

In the handful of cases commenced to date, the Korean government has retained external counsel (one Korean law firm and one foreign law firm as co-counsel). In practice, the Korean government usually selects external counsel by sending a request for proposal (RFP) to selected law firms and evaluating the answers received from those law firms through a closed tender process (a form of public procurement in which only select parties who have received the RFPs become eligible for participation). More recent practice shows that Korea prefers to send out the RFPs to Korean law firms, who are asked to form a consortium for the tender with foreign law firms who will act as co-counsel. Internal counsel at the International Dispute Settlement Division of the Ministry of Justice are also involved, but mostly in the capacity of oversight and support. It also seems that Korea seeks to expand the role of its internal counsel to the extent possible in relatively small-scale cases.

## Practicalities of enforcing an investment treaty claim against this country

- 17 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

## Washington Convention implementing legislation

Korea signed the Washington Convention on 18 April 1966, and ratified the Convention on 21 February 1967. The Convention entered into force for Korea on 23 March 1967, 30 days after its deposit of ratification. There is no specific Korean legislation implementing the Washington Convention, as Korea does not require a separate implementation legislation for international agreements to have domestic legislative effect.

- 18 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

## New York Convention –ratification

Korea signed and ratified the New York Convention on 8 February 1973. There is no specific Korean legislation implementing the New York Convention as Korea does not require a separate implementation legislation for international agreements to have domestic legislative effect.

- 19 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

## Legislation governing non-ICSID arbitrations

There is no legislation dedicated to non-ICSID investment arbitrations. However, the Arbitration Act applies to all arbitrations seated within its territory, and does not exclude investment arbitrations. The application of the Arbitration Act is expanded even to cases in which Korea is not the seat of arbitration for specific provisions, which include the provisions on provisional measures, recognition and enforcement (including arbitration awards for cases not seated in the territory of Korea). According to the Arbitration Act (article 39), foreign arbitral awards subject to the application of the New York Convention are to follow the New York Convention in terms of recognition and enforcement. In the case of foreign arbitration awards not subject to the New York Convention, the provisions of the Civil Procedure Act and Civil Enforcement Act on the recognition and enforcement of foreign judgments are to apply *mutatis mutandis*. The relationship between the latter and article 54 of the Washington Convention has not yet been clarified.



## 20 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

### Compliance with adverse awards

The only adverse award against Korea up to date is the *Mohammad Reza Dayyani v Korea* case (PCA Case No. 2015-38), which involved Iranian claimants. Reportedly, the compliance of the award has met some difficulty, but this was apparently due to the existence of international sanctions against Iran, rather than due to the Korean government's lack of will or effort for voluntary compliance.

## 21 Describe the national government's attitude towards investment treaty arbitration

### Attitude of government towards investment treaty arbitration

Although the Korean government has been supportive of investment treaty arbitration, the investment treaty arbitration system has been a subject of controversy in recent years. One formidable example is the *Korea vs. Lone Star Funds* case. The US-based private equity firm Lone Star Funds fell into dispute with the Korean government in relation to its previous investment in a Korean bank, and the two parties are currently undergoing ICSID arbitration. As another example, during the negotiations for the Korea–United States FTA, there was heated debate around the Investor-State Dispute Settlement provisions. Lawmakers and the media voiced their objection to this section, arguing that the Korean government could be exposed to arbitrary and unreasonable arbitration awards.

## 22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

### Attitude of local courts towards investment treaty arbitration

There have not yet been any instances of attempts to get investment arbitration awards recognised and enforced through domestic courts in Korea.

## National legislation protecting inward investments

## 23 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections	Procedural rights
Foreign Investment Promotion Act	<p>This legislation protects foreign investors and foreign investments from national treatment, and provides for the same treatment as that afforded to Korean nationals.</p> <p>In addition, it guarantees the transfer of proceeds and compensation relating to foreign investment. The legislation specifies a number of exceptions whereby foreign investment is restricted, such as to protect the interests of national safety and public order, for reasons of public hygiene or environmental preservation or for the protection of Korea's morals and customs.</p> <p>Furthermore, state and local government funding is available for foreign investors in certain limited situations (eg, for the construction of new factories).</p>	<p>Although the legislation does not expressly address access to the local courts or recourse to arbitration, it does establish a 'foreign investment ombudsman' to facilitate the resolution of complaints from foreign investors.</p>

## National legislation protecting outgoing foreign investment

- 24 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
Multilateral Investment Guarantee Agency	Korea is bound by the Convention establishing the Multilateral Investment Guarantee Agency (MIGA 1985). Under the Convention, Korean nationals and corporate entities are eligible to acquire, for the payment of a premium, political risk insurance from MIGA in respect of investments made in certain developing states provided that certain conditions are met. To be eligible for assistance, the investment must be medium to long term in nature, support the host country's development goals, comply with MIGA's Policy on Social and Environmental Sustainability and anticorruption and fraud standards, and also be financially viable.
K-SURE	K-SURE is a public institution under the auspices of the Ministry of Trade, and was established in 1992 in accordance with the Trade Insurance Act. Insurance for political risk in foreign investments is included among the many insurance policies offered by K-SURE. The foreign investment insurance policy offers protection from the failure of recovery of stocks (equities), dividends, loan interests in foreign corporations due to the host state's expropriation, the outbreak of war and instability such as armed conflicts, revolutions, civil war, civil unrest, as well as measures limiting free transfer of funds or the non-compliance or default of foreign governments. It also covers loans made by domestic financial institutions to domestic companies investing in overseas natural resource development projects or loans made for the purpose of supporting M&As with foreign corporations. To be eligible for foreign investment insurance policies, the investor must be a covered company or financial institution under the relevant legislation and must have taken out valid insurance with K-SURE.

## Awards

- 25 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties.

Awards
<p><b>The Republic of Korea as the respondent</b></p> <p><i>Hanocall Holding BV and IPIC International BV v Republic of Korea</i>, ICSID Case No. ARB/15/17 (Korea–Netherlands BIT). The Tribunal issued a procedural order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44 on 5 October 2016 (The Claimants filed a request for the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44 on 26 July 2016).</p> <p><i>Mohammad Reza Dayyani and others v Republic of Korea</i> (UNCITRAL), PCA Case No. 2015-38 (Korea–Iran BIT). The Tribunal issued a final award against Korea on 6 July 2018. The Korean government applied for the setting aside of this award at the UK High Court, but the High Court rendered a judgment refusing to set aside the award on 20 December 2019.</p> <p><i>Jin Hae Seo v The Republic of Korea</i> (UNCITRAL), HKIAC Case No. 18117 (Korea–US FTA). Korea submitted preliminary objections under an expedited preliminary objections procedure in accordance with the Korea–US FTA. The Tribunal issued a final award in favour of Korea on 24 September 2019.</p> <p><b>Korean national as the claimant</b></p> <p><i>Lee John Beck and Central Asian Development Corporation v Kyrgyz Republic</i>, Moscow Chamber of Commerce, (CIS Investor Rights Convention). The MCCI Tribunal made a final award in favour of the claimant on 13 November 2013. However, the award was set aside in its entirety by the judgments dated 24 June 2014 and 5 June 2015 by the Moscow Arbitrazh Court.</p> <p><i>Ansung Housing Co, Ltd v People's Republic of China</i>, ICSID Case No. ARB/14/25 (Korea–China BIT). China had initiated expedited preliminary objections against the claimant under article 41 of the ICSID Arbitration Rules. The Tribunal made a final award in favour of China dismissing all claims as manifestly lacking legal merit on 9 March 2017.</p> <p><i>Samsung Engineering Co, Ltd v Sultanate of Oman</i>, ICSID Case No. ARB/15/30 (Korea–Oman BIT). The parties reached a settlement and the Tribunal rendered its award dated 17 January 2018 taking note of this fact.</p>
Pending proceedings
<p><b>The Republic of Korea as the respondent</b></p> <p><i>LSF-KEB Holdings SCA and others v Republic of Korea</i>, ICSID Case No. ARB/12/37</p>

Awards
Pending proceedings
<i>Elliott Associates, LP v Republic of Korea</i> , UNCITRAL, PCA Case No. 2018-51
<i>Mason Capital LP and Mason Management LLC v Republic of Korea</i> , PCA Case No. 2018-55
<i>Schindler Holding AG v Republic of Korea</i> , under UNCITRAL Arbitration Rules and Korea-EFTA FTA
<i>Fengzen Min v Republic of Korea</i> , ICSID Case No. ARB/20/26 (Korea-China BIT), Korea initiated expedited preliminary objections under article 41 of the ICSID Arbitration Rules, The Tribunal rendered its decision on preliminary objections on 18 June 2021, dismissing some of the claims raised by the Claimant but not dismissing some. The remaining claims are pending.
Korean national as the claimant
<i>Shinhan Engineering &amp; Construction Co v Libya</i> (ad hoc) (Korea-Libya BIT).
<i>Samsung Engineering Co, Ltd v Kingdom of Saudi Arabia</i> , ICSID Case No. ARB/17/43 (Korea-Saudi Arabia BIT).
<i>Shin Dong Baig v Socialist Republic of Viet Nam</i> , ICSID Case No. ARB(AF)/18/2 (Korea-Vietnam BIT).
<i>Korea Wester Power C v India</i> (UNCITRAL), (Korea-India BIT, Korea-India CEPA).

## Reading List

### 26 Please provide a list of any articles or books that discuss this country's investment treaties.

Joongi Kim, *The Evolution of Korea's Modern Investment Treaties and Investor-State Dispute Settlement Provisions*, in Vivienne Bath and Luke Nottage, eds, *Foreign Investment and Dispute Resolution Law and Practice in Asia* (Routledge, 2011)

Joongi Kim, A Bellwether to Korea's New Frontier in Investor-State Dispute Settlement? The Moscow Convention and Lee Jong Baek v Kyrgyz Republic, *Pepperdine Dispute Resolution Law Journal*, Vol. 15, 549-565 (2015)

Hi-Taek Shin, *Investment Treaty Practice of China, Japan and Korea in Collected Courses of the International Academy for Arbitration Law*, Year 2012, Volume 1, at 1 (2015)

Chansik Han et al, *Hanil Tuja Hyupjung Haesul [Commentary on Korea-Japan Bilateral Investment Agreement]* (Korea Institute of Industry Research, 2003)

Hi-Taek Shin, Korea, in Chester Brown ed., *Commentaries on Selected Model Investment Treaties* (Oxford University Press, 2013)

Ministry of Justice, Republic of Korea, *Hanguk Eui Tuja Hyupjung Haesulseo* [Commentary on Korea's Investment Agreements 2010].



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As a partner in Lee & Ko's International Arbitration & Cross-border Litigation Group, Sanghoon Han handles a wide variety of international arbitration cases, and has represented both Korean and foreign clients in arbitration proceedings conducted under a number of leading international arbitration rule systems, including those of the Korean Commercial Arbitration Board (KCAB), the Singapore International Arbitration Centre (SIAC), the London Court of International Arbitration (LCIA), the International Centre for Settlement of Investment Disputes (ICSID) and the International Chamber of Commerce (ICC).

In addition to his arbitration-related practice, Mr Han has extensive experience as a legal adviser on labour law, M&A, corporate governance and foreign investment matters and advises clients on legal issues relating to all facets of corporate/business operations, including incorporation, corporate governance, regulatory compliance, mergers, restructuring, liquidation and dissolution matters.



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Han-Earl Woo is an associate in the International Arbitration Group of Lee & Ko. Prior to joining Lee & Ko, he served for three years as a Public Legal Officer at the International Legal Affairs Division of the Ministry of Justice where he handled various investor-state arbitration cases concerning the Korean government. He also advised the Korean government on a variety of issues concerning public international law, the negotiation of international investment agreements, investor-state arbitration reform, and was a part of the Korean delegation to the ICSID.



Lee & Ko's evolution as the premier law firm in Korea parallels in many ways the solid economic development of the country for more than 30 years following its founding in 1977, and has firmly established its leading position among the largest law firms in Korea. Our firm is constantly recognised for its excellence occupying top spots in many league tables and recognised in internationally respected legal publications for all of its major practice areas. We are proud of our steady advances in prominence and size.

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