GAR INVESTMENT TREATY ARBITRATION

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?

BIT Contracting party or MIT (Date of Entry into Force)	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella Clause	Cooling-off Period	Local Courts[1]	Arbitration[2]
Albania (18 May 2006)	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	180 days from request for negotiations or consultations, 90 days from notice of intent	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 ('the most constant protection and security under the [domestic laws]')	Yes	Yes	6 months	No	ISDS: No SSDS: Yes
Belarus (9 August 1997)	Yes	Yes	Yes ('full legal protection and security')	Yes	Yes	6 months	Yes	Yes
Belgium-Luxembourg Economic Union (3 September 1976)	Yes	Yes	Yes	Yes	Yes, but limited ('any other written obligation')	6 months	Yes	Yes
Bolivia (4 June 1997, but terminated on 4 June 2019 after Bolivia gave notice of termination)	Yes	Yes	No	Yes	Yes	6 months	Yes	Yes
Brazil (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
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 (interim injunctive relief)	Yes
Cambodia (12 March 1997)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Cameroon (13 April 2018)	Yes	Yes	Yes	Yes	Yes, but limited ('any specific investment agreement between an authority at the central level of government ...')	6 months	Yes	Yes

BIT Contracting party or MIT (Date of Entry into Force)	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella Clause	Cooling-off Period	Local Courts[1]	Arbitration[2]
China (1 December 2007)	Yes	Yes	Yes	Yes	Yes	4 months of domestic procedure, if requested by the State 90 days from notice of intent	Yes	Yes
China and Japan (17 May 2014)	Yes	Yes	Yes	Yes	Yes, but limited ('any written commitments in the form of an agreement or contract')	4 months	Yes	Yes
Colombia (not in force)	Yes	Yes	Yes	Yes	Yes	9 months, In addition 3 months of domestic administrative remedies	Yes	Yes
Congo (13 August 2011)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Democratic Republic of Congo (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
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 (10 June 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	ISDS: No SSDS: Yes
Germany (15 January 1967)	Yes	Yes	Yes	Yes	No	N/A	No	ISDS: No SSDS: 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 and replaced by CEPA)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

BIT Contracting party or MIT (Date of Entry into Force)	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella Clause	Cooling-off Period	Local Courts[1]	Arbitration[2]
Indonesia (10 March 1994)	Yes	Yes	Yes ('adequate protection and security')	Yes	No	12 months of local remedies	No	Yes
Iran (31 March 2006)	Yes	Yes	Yes	Yes	Yes, limited ('commitments it has entered into through this Agreement')	6 months	Yes	Yes
Israel (19 June 2003, but replaced by Israel–Korea FTA)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Italy (26 June 1992)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Jamaica (5 November 2007)	Yes	Yes	Yes	Yes	Yes	9 month	Yes	Yes
Japan (1 January 2003)	Yes	Yes	Yes	Yes	No	3 months	Yes	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
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	No	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	No	180 days	Yes	Yes
The Netherlands (1 March 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Nicaragua (22 June 2001, but terminated and replaced by Korea-Republics of Central America)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes

BIT Contracting party or MIT (Date of Entry into Force)	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella Clause	Cooling-off Period	Local Courts[1]	Arbitration[2]
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	SSDS: 6 months	No	ISDS: No, SSDS: Yes
Panama (8 February 2002, but terminated and replaced by Korea-Republics of Central America)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Paraguay (6 August 1993)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
The Philippines (25 September 1996)	No	Yes	No	Yes	No	3 months of local remedies	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 (30 December 1994, revised and entered into force 11 January 2008)	Yes	Yes	Yes	Yes	Yes	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	Yes	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
Switzerland (7 April 1971, but terminated and replaced by EFTA–Korea FTA)	Yes	Yes	Yes	Yes	No	N/A	No	ISDS: No SSDS: Yes
Tajikistan (13 August 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Tanzania (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Thailand (30 September 1989)	Yes	Yes	Yes	Yes	Yes	SSDS: 6 months	No	Yes
Trinidad and Tobago (27 November 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Tunisia (28 November 1975)	Yes	Yes	Yes	Yes	No	N/A	No	Yes

BIT Contracting party or MIT (Date of Entry into Force)	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella Clause	Cooling-off Period	Local Courts[1]	Arbitration[2]
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 ('any specific investment agreement between an authority at the central level of government ...')	6 months	Yes	Yes
Uzbekistan (5 April 2023)	Yes	Yes	Yes	Yes	No	180 days	No	Yes
Vietnam (5 June 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Zimbabwe (7 April 2021)	Yes	Yes	Yes	Yes	Yes ('any specific investment agreement between an authority at the central level of government ...')	6 months	Yes	Yes

Free Trade Agreements	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts[10]	Arbitration
ASEAN (1 June 2007)	Yes	Yes	Yes	Yes	No	6 months	Yes ('provided that such courts or tribunals have jurisdictions over such claims')	Yes
Australia (12 December 2014)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Canada (1 January 2015)	Yes	Yes	Yes	Yes	No	6 months	No	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

Free Trade Agreements	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts[10]	Arbitration
EFTA (10 January 2006, but only between Korea, on the one hand, and Iceland, Liechtenstein and Switzerland, on the other)	Yes	Yes	Yes	Yes	Yes, but limited ('any written obligation ... which the investor could rely on in good faith when establishing, acquiring or expanding the investment')	6 months	Yes	Yes
European Union (1 July 2011)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
India (1 January 2010)	Yes	Yes	Yes	No	No	6 months	Yes	Yes
Indonesia (1 January 2023)	Yes	Yes	Yes	Yes	No	180 days	Yes	Yes
Israel (29 November 2022)	Yes	Yes	Yes	Yes	No	6 months	Yes ("interim injuctive relief")	Yes
New Zealand (20 December 2015)	Yes	Yes	Yes	Yes	No	6 months from request for consultations 90 days from notice of intention	Yes ("interim injuctive relief")	Yes
Peru (1 August 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
RCEP (1 February 2022)	Yes	Yes	Yes	Yes	No	N/A	N/A	ISDS: No SSDS: 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	6 months In addition, 90 days from notice of intention	Yes	Yes
Vietnam (20 December 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

1. A positive response of 'yes' indicates that the treaty grants an investor the explicit right to initiate a dispute under that treaty before local courts. On the other hand, a negative response of 'no' signifies that the treaty does not expressly grant the right to use local courts, making it subject to the application of local law.
2. ISDS stands for Investor-State Dispute Settlement, while SSDS refers to State-State Dispute Settlement. If there is no differentiation between the two, answering 'yes' implies that the treaty includes both ISDS and SSDS mechanisms.

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	Generally, BITs define an 'investor' as 'any natural or juridical person of one Contracting Party who invests in the territory of the other Contracting Party'. However, some BITs do not include a definition of an 'investor' (eg, Sri Lanka BIT and Switzerland BIT). In the case of FTAs, all of Korea's FTAs include a definition of an 'investor' to be 'a national or an enterprise of a Party, that attempts to make, is making, or has made an investment'. Some BITs and FTAs explicitly require an investor to make an investment in accordance with the laws of the other contracting party (such as Kenya and Cameroon BITs).
Natural persons and dual nationals	The definition of 'natural persons' is based upon the 'nationality' to be determined in accordance with the laws of the country the nationality of which is claimed. The Canada and New Zealand FTAs include permanent residents in the definition of natural persons. Some of Korea's BITs and FTAs 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' (such as Australia, Canada, Colombia, the US, Turkey, New Zealand, Peru FTAs and Uzbekistan, Armenia, Cameroon BITs).
Juridical persons/enterprise of a party	Generally, Korea's BITs define the term 'juridical persons' as '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'. Generally, Korea's FTAs define the term 'juridical persons' (or 'enterprise') as 'any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately or governmentally owned including any corporation, trust, partnership joint venture, or other association' (ie, China, Canada, New Zealand, Vietnam or Turkey FTAs). Under the Australia FTA, an 'enterprise of a Party' is limited to 'an enterprise constituted or organized under the law of a party, and a branch of an enterprise of a party located in the territory of a party and carrying out business activities there'.

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'
Qualifying investments	Most of Korea's BITs broadly define the term 'investment' as 'every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party'. This encompasses various types of assets, including movable and immovable property, other property rights, shares or any other form of participation in a company, intellectual property rights, business concessions, etc. Some BITs, such as those with Hungary and Panama, stipulate an additional requirement that investments must be 'connected with economic activities.' Korea's recent BITs and FTAs, including those with Rwanda, Uzbekistan, Armenia, Israel and the US, typically include a provision that requires the asset to have the characteristics of an investment as interpreted by tribunals applying article 25(1) of the ICSID Convention, known as the *Salini* test. However, Korea's relatively older BITs do not stipulate such a requirement. In the case of FTAs, the definition of 'investment' is generally similar to that in the investment chapter of the Korea–US FTA, which defines 'investment' as every asset that has 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.
Exclusion of certain assets	Some investment treaties exclude certain types of assets from the definition of 'investment': • a claim to money/payment that arises solely from commercial contracts, unless it is a loan that has the characteristics of an investment (eg, Mexico BIT and Chile, Peru, US and Vietnam FTAs); • a claim to money/payment that arises solely from the extension of credit in connection with a commercial transaction, such as trade financing (eg, Mexico BIT and Chile, Vietnam FTAs); • market share, market access, expected gains and opportunities for profit-making (eg, Uruguay and Myanmar BITs); • public debt operations (eg, Colombia FTA); and • an order entered in a judicial or administrative action (eg, Colombia FTA).

Issue	Distinguishing features in relation to the concept of 'investment'
Compliance with local laws	The BITs and FTAs entered into by Korea typically require that investments be made in accordance with the laws of the contracting parties (eg, Vietnam, Israel FTAs and Zimbabwe, Rwanda, Armenia BITs). Some investment treaties specifically require that investments 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 and Jamaica BITs).
Commencement of coverage	Most of Korea's BITs and FTAs provide protection to all investments, including those made before the relevant treaty's entry into force. This approach grants protection to investments that existed both prior to and after the treaty's enforcement. However, in some cases, such as the Lithuania, Czech Republic and Iran BITs, the treaty applies solely to investments made after a certain date or its entry into force.

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
Fair and Equitable Treatment (FET) Standard	Most of Korea's BITs and FTAs include assurances that covered investments shall be granted 'fair and equitable treatment', although the specific wording may vary. For example, the Italy BIT grants covered investments 'equitable and reasonable' treatment.
Indicative list of Fair and Equitable Treatment elements	Several FTAs, including those between Australia, Canada, China, Colombia, New Zealand, Turkey and Vietnam, provide indicative lists of FET elements that identify the types of treatment that would constitute a breach of the FET clause. For example, the Australia and New Zealand FTA specifies that 'fair and equitable treatment' includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world. Under some older BITs, fair and equitable treatment is only granted to investments that comply with the laws and regulations of the host state (e.g., Senegal BIT).
International law/Customary international law/Minimum standard of treatment	Many of Korea's BITs and FTAs, including those with the US, Australia, Canada, Japan-China, Colombia, Vietnam, New Zealand, Croatia, Japan, Kuwait and Uruguay, now align the content of the FET obligation with international law, customary international law, and the minimum standard of treatment. However, most of Korea's older investment treaties do not expressly equate the FET standard with the aforementioned legal principles.

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
Public purpose exception	The majority of BITs and FTAs permit lawful expropriation provided that expropriation is for a 'public purpose.' Specific wording varies between investment agreements – for instance, some BITs refer to 'public interest' (eg, Congo, Hungary, Morocco and Senegal BITs), while others refer to 'public utility' (eg, Dominican Republic BIT), 'public benefit' (eg, Germany and Saudi Arabia BITs) and 'public purpose or public necessity' (eg, Guatemala BIT). Some treaties are even more specific providing that expropriation be 'in the public interest, public use or in the interest of national defense' (eg, Philippines BIT), or for 'public benefit or social interest' (eg, El Salvador BIT). Some BITs do not include a public purpose exception (eg, Switzerland BIT and Tunisia BIT).
Non-discriminatory and in accordance with legal procedure	The majority of BITs and FTAs entered into by Korea require that expropriations be conducted in a non-discriminatory manner to be considered lawful. With regard to the requirement that expropriation be in accordance with legal procedures, this language has been adopted in several BITs (eg, Albania, Cambodia, Lithuania, Qatar, Slovakia, Tajikistan BITs), and with slightly variations in other BITs. For instance, BITs with India, Nigeria, Pakistan and Spain use the wording 'in accordance with its laws'. Moreover, some FTAs and BITs require that expropriations be conducted 'in accordance with due process of law', such as the Uzbekistan BIT, US FTA and others.

Issue	Distinguishing features of the 'expropriation' standard
Indirect expropriation	Most of Korea's BITs and FTAs recognise 'indirect' expropriation or 'other measures having effect equivalent to nationalization or expropriation' and collectively refer to expropriation and other similar measures of expropriation, with the exception of some BITs (eg, Austria, Germany and Hungary BITs).
Right to compensation	Most of Korea's BITs provide 'prompt, adequate and effective' compensation where expropriation occurs, although language tends to vary between BITs. Some BITs require expropriation be against 'just compensation' (eg, Mexico BIT, Netherlands BIT). Under most BITs and FTAs, compensation is based on the 'fair market value' of the expropriated investments, the value assessed immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is earlier. Some treaties consider the 'actual value of the investment expropriated' (eg, Austria and France BITs).
Right of review	Some of Korea's BITs and FTAs provide the investor with a 'right to prompt review' (eg, China FTA and Korea–China–Japan trilateral investment agreement). Some grant the investor the right to have the legality of the expropriation reviewed (eg, Austria BIT). A number of BITs do not mention the right to review (eg, Finland, Iran, Italy, Pakistan, Senegal and Turkey BITs).
Carve out for general regulatory measures	A number of FTAs include a carve-out provision for general regulatory measures. For example, the Australia FTA provides that 'non discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.' Similar provisions are also found in other FTAs (eg, Israel FTA, Canada FTA, China–Japan FTA, China FTA, Colombia FTA, New Zealand FTA, Vietnam FTA and Turkey FTA), as well as in BITs (eg, Myanmar BIT, Rwanda BIT and Uruguay BIT).

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 of application of national treatment (NT) and most favoured nation (MFN) standard	Most of Korea's BITs include NT and MFN provisions, which apply to investments in the territory of the other contracting party and apply to investors with respect to operation, management, maintenance, use, enjoyment or disposal of investments. NT and MFN provisions generally apply after the investment has been established and does not extend to the establishment, acquisition, and expansion phases, although there are a few exceptions. In the Japan BIT, NT and MFN obligations extend to the 'establishment, acquisition, expansion' of investments. Similarly, many FTAs extend NFN treatment to pre-establishment phases (eg, US, ASEAN, Vietnam, Australia and Canada FTAs).
'Like circumstances'	Many BITs and FTAs make reference to 'like circumstances'. For instance, the Australia FTA provides that treatment be accorded by a party that is 'no less favourable than the most favourable treatment accorded in like circumstances'. Similar provisions can be found in other FTAs (eg, Canada, China–Japan, China, Colombia, New Zealand and Vietnam) and in some BITs (eg, China, Japan, Kuwait, Myanmar, Uruguay, Spain and Rwanda BITs). However, some of Korea's older BITs do not refer to 'like circumstances' (eg, Germany, Netherlands, Tunisia, Sri Lanka BITs and others).
Common limitations	Many of Korea's BITs and FTAs state that NT and MFN obligations do not extend to the benefits or advantages of membership of any existing or future customs union, a free trade area, a common market, economic community/union or to taxation agreements, arrangements, legislation or conventions (eg, Lithuania, Poland, Uzbekistan, Egypt, Qatar, Oman, Kenya, Cameroon, Myanmar, China BITs and Israel, Chile FTAs). The limitation, however, is not included in various other FTAs (eg, Peru, US, Turkey, Australia, Vietnam, New Zealand, Colombia, Singapore and Republics of Central America FTAs).

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Limitation on NT and MFN obligations	Some BITs include additional carve-outs to NT and MFN obligations: • The Austria, China and Italy BITs provide that NT and MFN do not apply to any regulation to 'facilitate the frontier traffic'. • The Guyana BIT reserves a right to grant special incentives to its nationals to 'stimulate the creation and growth of local industries'. • 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. • The Nicaragua BIT excludes 'deductions, fiscal exemption and any other similar concessions on taxation'. • Some BITs, including those with Rwanda, Myanmar, Uzbekistan, and Armenia, provide that NT 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 'development finance institutions' will be excluded.
Extension of treatment to whole treaty	Most BITs, especially the older ones, do not address the controversial issue of whether MFN treatment applies to dispute settlement provisions. However, some BITs, including those with Japan, China and Armenia, expressly provide that the MFN does not apply to provisions concerning the settlement of investment disputes.

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
Full protection and security (FPS) Standard	An overwhelming majority of Korean BITs and FTAs provide covered investments with 'full protection and security' (FPS), although the wording varies. Some simply provide covered investments with 'protection' (eg, Paraguay, Spain, Sri Lanka and Switzerland BITs) while others provide covered investments with 'full legal protection' (eg, Iran and Belarus BITs), 'adequate protection and security' (eg, Indonesia BIT) or 'most constant protection and security' (eg, Bangladesh and Thailand BITs).
With reference to domestic law	In a few BITs, FPS is granted with reference to domestic law. For instance, the Pakistan BIT provides that 'Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy full protection and security under the laws of the latter Contracting Party.' Bangladesh BIT also refers to '[...] most constant protection and security under the laws of the other Contracting Party'. The majority of Korea's investment treaties do not link the FPS clause with domestic law.
International law/ Customary international law/Minimum standard of treatment	Some BITs and FTAs expressly provide that FPS shall be limited to the customary international law minimum standard of treatment. Most of those treaties stipulate that FPS requires each party to provide the level of police protection required under customary international law (eg, Armenia, Kenya, Cameroon, Zimbabwe BITs and US, Rwanda, China, New Zealand, Australia and Columbia FTAs).

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

Issue	Distinguishing features of any 'umbrella clause'
Umbrella clause	Many of Korea's older BITs contain an umbrella clause, which typically states that: 'Each Contracting Party shall observe any other obligation it may have entered into force with regard to investments in its territory by investors of the other Contracting Party.' However, recent BITs and FTAs entered into by Korea do not include an umbrella clause at all (e.g., Bulgaria, Czech Republic, Egypt, Finland, Malaysia, Philippines, Slovakia, Sweden and UAE BITs).

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

Issue	Other substantive protections
Free transfer of payments	Most BITs and FTAs guarantee the free transfer of all payments relating to investments and returns, although wording may vary. Many BITs and FTAs require that transfer of payments be 'without delay' (eg, China BIT, Greece BIT, Jamaica BIT, Australia FTA, Peru FTA and Turkey FTA), while others state that transfer shall be 'without unreasonable delay' (eg, Indonesia BIT) or 'without undue restriction or delay' (eg, Azerbaijan, Burkina Faso, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Mauritius BITs). The Kuwait BIT specifically stipulates that if there is any delay in effecting the transfer, the investor is entitled to recover interest. Certain BITs condition the free transfer on the right to exercise powers conferred by its laws and consistent with rights and obligations as members of the International Monetary Fund (eg, Bangladesh and Lithuania BITs). Others require the fulfilment of tax and public fee obligations (eg, Belarus BIT), compliance with tax obligations (eg, Indonesia and Saudi Arabia BITs), or the fulfilment of legal obligations (eg, Mongolia BIT). Restrictions to free transfer are also found in several BITs and FTAs in the following circumstances: • in 'exceptional financial or economic circumstances' (eg, Sri Lanka and the UK BITs); • 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 (eg, Japan BIT and Mexico BIT). Similar restrictions appear in FTAs (eg, China, Peru and Vietnam FTAs); and • 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 (eg, Slovakia BIT).

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

Issue	Other substantive protections
Denial of benefits	Many of Korea's investment treaties include denial of benefit clauses that allow the state to deny benefits of an investment agreement to an investor if it is owned or controlled by a third non-contracting party to the treaty. Denial of benefit clauses have been actively included in BITs after the first investment treaty arbitration was initiated against Korea *(LSF-KEB Holdings and others v Republic of Korea),* which was lodged by a US-based fund through the Belgium–Luxembourg BIT in 2012. Generally, denial of benefits clauses can be invoked in the following circumstances: • Korea does not maintain normal economic relations with the third non-contracting party (e.g., China and US FTAs); • Korea adopts or maintains measures with respect to the third non-contracting party that prohibit transactions with the investor (e.g., Australia, Canada, China, Colombia and US FTAs); or • the investor has no substantive business operations in the territory of other contracting party (e.g., Australia, Canada, Colombia, India, New Zealand, Peru and US FTAs).
Carve-outs for taxation and reservations for certain industries	The most common carve-outs in Korean BITs are related to National Treatment and/or the most-favoured-nation obligation in cases of government procurement, government subsidies and taxation measures. With regard to taxation measures, some treaties have specific provisions that stipulate that no obligations will apply with respect to tax measures unless the obligation relates to expropriation (e.g., Armenia BIT). Typically, in Korean FTAs, reservations are made in the Annexes and Schedules to the FTA and these are included as non-conforming measures clauses in the Investment Chapters. Most reservations are made with respect to national treatment obligations for certain industries. For instance, under the Korea–US FTA national treatment, reservations are made with respect to rice or barley, beef cattle farming, air transportation services, telecommunications, marine research and maritime mapping, etc.
Essential security exception	The exception for essential security interests is becoming more common in BITs and FTAs. This clause is often interpreted as a self-judging provision, which means that the party invoking the exception is given discretion to determine whether the measure in question was necessary for the protection of its essential security interests. The essential security exception permits Korea to take necessary measures for the protection of its essential security interests, take measures in pursuance of its obligations under the UN Charter for the maintenance of international peace and security, take any measures to protect human, animal or plant life or health, or take any measures for the maintenance of public order. Such securities exception clauses are also commonly incorporated through a separate exceptions chapter in the case of FTAs.

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 clauses	Many of recent Korea's international investment agreements have incorporated a fork-in-the-road clause, which varies in wording. For instance, the Colombia FTA specifies that 'once the investor has submitted the dispute to either a competent court or administrative tribunal [...], the choice of the procedure shall be final and the investor shall not submit the same dispute to a different forum'. Similarly, the Uzbekistan BIT provides that 'once the investor has submitted the dispute to one of the arbitration mechanisms provided for in paragraph 2 of this Article, the choice of the procedure shall be final and the rest of mechanisms therein shall not apply'. However, with some exceptions (eg, Iran BIT signed 31 October 1998), most of the older BITs do not include fork-in-the-road clauses. For example, the Panama BIT (signed 10 July 2001), Japan BIT (signed 22 March 2002), Kuwait BIT (signed 15 July 2004), Slovakia BIT (signed 27 March 2005) and Croatia BIT (signed 19 July 2005) do not contain a fork-in-the-road clause. On the contrary, Myanmar BIT (signed 5 June 2014), Kenya BIT (signed 8 July 2014), Armenia BIT (signed 19 October 2018) and Uzbekistan BIT (signed 19 April 2019), Vietnam FTA (signed 5 March 2015), China FTA (signed 1 June 2015), Republics of Central American FTA (signed 22 August 2019) and Indonesia CEPA (signed 18 December 2020) has incorporated such a clause. Under certain FTAs, if an investor from the other contracting party alleges that Korea has breached an obligation under the treaty in any proceedings before a court or administrative tribunal of Korea, the investor may be barred from submitting the same claim to arbitration (eg, US and Israel FTAs).
Exhaustion of local remedies/waiver of local remedies and amicable settlement	While most of Korea's international investment agreements do not require the exhaustion of local remedies, some agreements do mandate pursuing these remedies for a specified period (eg, six months) before initiating arbitration proceedings (as in the Peru BIT). Certain recent BITs also contain waiver clauses, which require the investor to waive their right to initiate any disputes related to the measure in question if it has already been brought to one of the agreed fora. In some investment agreements, the investor must waive their right to initiate a claim under any other dispute settlement procedure before commencing arbitration (such as in the Mexico BIT, Vietnam BIT and China FTA). Furthermore, some FTAs stipulate that the notice of arbitration must be accompanied by the claimant's written waiver of any right to initiate or continue proceedings before any administrative tribunal or court under either party's law, or other dispute settlement procedures, for claims submitted to arbitration (as seen in the US and Israel FTAs).
Limitation periods	Some of Korea's BITs and FTAs provide a limitation period of three years within which arbitration must be commenced (eg, Japan, Mexico and Vietnam BITs, and Singapore, Columbia, China and India FTAs). The majority of older investment agreements do not include a limitation period for the submission of a claim.

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

Korea's investment treaties do not appear to take any approach on the issue of standing permanent dispute resolution bodies. The possibility of such a standing appellate body or review mechanism is, however, envisaged in the Investment Chapters of the US FTA and the Canada.

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

There are four agreements that are signed but not yet in force (ie, Brazil, Colombia, Congo and Tanzania BITs). The Korean government is, however, open to negotiation of new investments 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	Claim notices are generally sent to the entity that is stipulated in the relevant investment treaty. For FTAs such as the Australia FTA and Canada FTA, a notice of dispute is to be served on the Office of International Legal Affairs, Ministry of Justice of the Republic of Korea. Where the investment treaty does not stipulate where claim notices are to be served, there is a tendency for investors to send their notices to the Korean President as the head of state, with copies to the relevant head of the government agencies, and the ROK Ambassador to the home country of the investor.

15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	Investment treaty arbitrations are handled by an intra-government working group called the International Investment Dispute Task Force (IIDTF) established by a presidential decree that took effect on 5 October 2021. IIDTF consists of representatives from the Office of the Prime Minister, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Trade and Industry 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. The Ministry of Justice also plays a supervisory role (through the International Dispute Settlement Division of the Ministry of Justice) taking the position of the chair of IIDTF.

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 most cases where investment claims have been brought against the Korean government, Korea generally shows a tendency to engage external counsel through a closed tender process. However, recently the role of internal counsel at the International Dispute Settlement Division of the Ministry of Justice has been expanded to extend to the handling of small-scale cases. For example, in a few recent cases brought by US investors against Korea under the US FTA, the cases were dealt with by the government's internal counsel from the Ministry of Justice (the International Dispute Settlement Division of the Ministry of Justice) without involving external counsel. Therefore, the Korean government appears to use both internal and external counsel as necessary.

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. 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 implementing legislation	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. It should be noted that Korea has made commercial reservation when ratifying the Convention, which may arguably affect the enforceability of non-ICSID investment arbitration award.

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

Legislation governing non-ICSID arbitrations	There is no legislation governing non-ICSID investment arbitrations. However, it is arguable that non-ICSID investment arbitrations may be covered under the Arbitration Act, which applies to all arbitrations seated within the territory, and which does not exclude investment arbitrations. The application of the Arbitration Act is rather extensive as it applies 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).

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 made against Korea up to date is the *Mohammad Reza Dayyani v Korea* case (PCA Case No. 2015-38). Compliance was said to be difficult due to the existence of international sanctions against Iran, and not due to the Korean government's reluctance to comply with the award. In view of Korea's inability to comply with the award, Dayyani filed second investment arbitration under the same treaty asserting that Korea's failure to pay the award constituted a breach of the treaty. However, after the arbitration commenced upon Korea's receipt of the notice of arbitration in 2021, the Korean government was reportedly granted a licence from the US government to transfer the amount of the arbitration award and the payment process is still ongoing. The newly filed arbitration case remains pending.

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

Attitude of government towards investment treaty arbitration	A pivotal point for the Korean government and its approach toward investment treaty arbitration was the *Lone Star v Korea* case, where a US-based private equity firm Lone Star Funds fell into a dispute with the Korean government in relation to its previous investment in a Korean bank. While prior to this dispute, the Korean government's attitude toward investment arbitration had been positive, it now displays a level of caution. This was evident during the negotiations for the Korea–United States FTA, where heated debate took place on the ISDS provision. Lawmakers and the media voiced their objections to the inclusion of the ISDS provision, arguing that it could expose the Korean government to arbitrary and unreasonable arbitration awards. Despite these concerns, Korea has entered into around 100 or more IIAs, with the vast majority including ISDS clauses. This demonstrates the Korean government's intention to engage in investment arbitration as an inevitable part of Korea's participation in inward and outward foreign direct investment.

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	The local courts' attitude and recognition of investment awards is yet to be realised, as there have been no attempts for enforcement.

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	National treatment – Foreign investors and their investments are given the same treatment as that afforded to Korean nationals. Transfer – Guarantee of transfer of proceeds and compensation relating to foreign investment. Exceptions – Foreign investments may be restricted for reasons associated with the protection of the interests of national safety and public order, public hygiene, environmental preservation or the protection of Korea's morals and customs. State and local government funding – Some foreign investors in certain limited situations (eg, for the construction of new factories) may be entitled to state and local government funding.	Foreign investment ombudsman – The Ombudsman facilitates the resolution of complaints from foreign investors. There are no provisions providing for arbitration.

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 (MIGA 1985)	Pursuant to the MIGA Convention, Korean nationals and corporate entities may be eligible to acquire political risk insurance with respect to investments made in certain developing states, provided that the investment is medium to long term in nature, supports the host country's development goals, complies with MIGA's Policy on Social and Environmental Sustainability and anti-corruption and fraud standards, and is a financially viable investment.
K-SURE under the auspices of the Ministry of Trade (1992) pursuant to the Trade Insurance Act.	The foreign investment insurance policy provides protection against failure of recovery of stocks (equities), dividends, loan interests in foreign corporations due to the host state's expropriation, outbreak of war and 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. To be eligible, 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
Claims against Korea as respondent state
Hanocal Holding BV and IPIC International BV v Republic of Korea, 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).
Mohammad Reza Dayyani and others v Republic of Korea (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. (Award was not published. Judgment is publicly available.)
Jin Hae Seo v The Republic of Korea (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. (Award is publicly available.)
LSF-KEB Holdings SCA and others v Republic of Korea, ICSID Case No. ARB/12/37 (Belgium, Luxembourg-Korea BIT). While the Tribunal dismissed the majority of the claimants' claims but a majority of the tribunal awarded 216.5 million USD to the claimants on 30 August 2022. (Award is publicly available.)
Elliott Associates L.P. v Republic of Korea, PCA Case No. 2018-51 (United States-Korea FTA). The Tribunal issued the Award on 20 June 2023 and ordered Korea to pay about 54 million USD to the claimant. (Award is publicly available.)
Claims brought by Korean investors
Lee John Beck and Central Asian Development Corporation v Kyrgyz Republic, 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. (Award and the judgments are publicly available.)
Ansung Housing Co, Ltd v People's Republic of China, 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. (Award is publicly available.)
Samsung Engineering Co, Ltd v Sultanate of Oman, 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. (Settlement conditions are not public.)

Pending proceedings
Claims against Korea as respondent state
LSF-KEB Holdings SCA and others v Republic of Korea, ICSID Case No. ARB/12/37. The possibility of annulment proceeding remains as this article is being published.
Elliott Associates, LP v Republic of Korea, PCA Case No. 2018-51. Korea government announced that it initiated set-aside proceedings in the UK, the seat of arbitration.
Mason Capital LP and Mason Management LLC v Republic of Korea, PCA Case No. 2018-55.
Schindler Holding AG v Republic of Korea, PCA Case No. 2019-44.
Fengzen Min v Republic of Korea, 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.
Mohammad Reza Dayyani and others v. Republic of Korea (II) (Iran-Korea BIT)
Jason Hun Won v. Republic of Korea (Korea-US FTA)
Claims brought by Korean investors
Shinhan Engineering & Construction Co v Libya (ad hoc) (Korea–Libya BIT) (concluded)
Samsung Engineering Co, Ltd v Kingdom of Saudi Arabia, ICSID Case No. ARB/17/43 (Korea–Saudi Arabia BIT). (details unknown)
Shin Dong Baig v Socialist Republic of Vietnam, ICSID Case No. ARB(AF)/18/2 (Korea–Vietnam BIT) (concluded)
Korea Wester Power C v India (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.

Article/Book
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 DisputeResolution Law and Practice in Asia* (Routledge, 2011).
Hi-Taek Shin, Korea, in Chester Brown ed., *Commentaries on Selected Model Investment Treaties* (Oxford University Press, 2013).
Jaemin Lee, An Important First Stride, but Beware of the Pitfalls: A Critical Analysis of the ISDS Mechanism of the 2012 Korea-China-Japan Trilateral Investment Treaty, *Chinese Journal of International Law*, Vol. 12(3) (2013): 509-542.
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, (2015): 549–565.
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).
Ministry of Justice, Republic of Korea, Hanguk Eui Tuja Hyupjung Haesulseo, revised edition [Commentary on Korea's Investment Agreements 2018] (in Korean).



Junu Kim

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Junu Kim is one of the leading partners of the international arbitration and litigation practice at Bae, Kim & Lee LLC, having being involved in many domestic and international arbitrations seated in Seoul, Hong Kong, Singapore, New York, Paris, Tokyo and Washington, most typically under the rules of the ICC, KCAB, SIAC, JCAA and ICSID. He particularly engages in disputes among shareholders and M&A, licensing, sales contracts and investor-state disputes. He has extensive experience in advising on the litigation, preservative measures or corporate decision-making necessary at the stage of initial negotiation of disputes before international arbitration cases commence or at the stage of execution and performance after an arbitration award is granted. Based on this experience, Junu was intensively involved in the production of *Arbitration Law of Korea: Practice and Procedure* (co-author, Juris Publishing, 2011), published by the firm's international arbitration and litigation team. He also co-authored a sister volume written in Korean (Pakyongsa, 2012). Based on these outstanding experiences and expertise, he was recognised by *Asian Legal Business* as one of the 'Asia 50 Disputes Lawyers' in 2021.



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Woojae Kim is a partner in the International Arbitration Group at Bae, Kim & Lee LLC and his practice focuses on international arbitration and international litigation, including large-scale construction arbitration cases. Woojae began his practice in 2009 and joined BKL in 2013. Since joining BKL, Woojae has handled various arbitration cases and has advised clients on numerous construction-related claims. He has also represented clients in investor-state disputes (ISD), including the highly publicised ISD filed by Lone Star Funds against the Korean government. Woojae also has experience representing clients in international arbitration cases involving general corporate matters, post-M&A and energy-related disputes. Woojae is qualified in Korea and the State of New York. He holds an LLM degree from Stanford University.



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Changwan Han provides various legal services in the fields of international investment dispute, international arbitration, international litigation, maritime and aerospace & transportation.

From 2018 to 2023, Mr Han worked as director of the International Legal Affairs Division and director of International Dispute Settlement Division at the Ministry of Justice (Republic of Korea), dealing with matters related to international investment dispute, international arbitration, investment and trade agreement, and international commercial law. Earlier in his career, he joined Bae, Kim & Lee LLC in 2009 and worked in various cases, including international transaction, international litigation, and maritime and air transport after being discharged from his military service as a judge advocate.

Mr Han was admitted to the Illinois Bar in 2017 and to the Korean Bar in 2006. He earned an PhD from Seoul National University in 2022, an LLM from Chicago Law School in 2016, and an LLB from Korea Maritime & Ocean University in 2004.

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Bae, Kim & Lee LLC (BKL) was founded in 1980 and is one of the premier law firms in South Korea. The Seoul-based BKL provides market-leading legal services in every practice area it covers, including corporate and M&A, capital markets, finance, dispute resolution, antitrust, tax, IP, employment, real estate, TMT, maritime and insurance. With over 780 attorneys and other professionals located throughout its offices in Seoul, Beijing, Hong Kong, Shanghai, Hanoi, Ho Chi Minh City, Yangon and Singapore, BKL has a diverse mix of Korean and foreign attorneys, tax advisers, industry analysts, former government officials and other specialists in various practice areas. The firm advises a broad range of clients, such as Korean conglomerates and government organisations, major international financial institutions and multinational corporations. BKL is a member of the World Law Group, with its global network of over 50 law firms, and has strong relationships with not only legal but financial, tax and accounting advisers in various jurisdictions throughout the world. BKL is the first South Korean law firm to have formed, in 2002, an internal pro bono committee, which is devoted to offering legal aid services as well as training pro bono lawyers.

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