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Settlement of commercial disputes

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[Original: English]
[Date: 29 December 2016]

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Yes.

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No.

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

Yes. Article 9.23 of Chapter 9 (Investment) of the Free Trade Agreement between the Government of the People's Republic of China and the Government of Australia (signed in June 2015) provides that: "Within three years after the date of entry into force of this Agreement, the Parties shall commence negotiations with a view to establishing an appellate mechanism to review awards rendered under Article 9.22 in arbitrations commenced after any such appellate mechanism is established. Any such appellate mechanism would hear appeals on questions of law."

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

A few of IIAs concluded by China contain such provisions. For example, Article 27.4 of the Agreement Among the Government of the People's Republic of China, the Government of Japan and the Government of the Republic of Korea for the Promotion, Facilitation and Protection of Investment (signed in May 2012) provides that: "The Contracting Parties shall, at the request of any Contracting Party, enter into negotiations through appropriate channels for the purpose of amending this Agreement. This Agreement may be amended by agreement among the Contracting Parties. Such amendment shall be accepted by the Contracting Parties in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Contracting Parties. Amendments shall not affect the rights and obligations of the Contracting Parties provided for under this Agreement until the amendments enter into force."

Do any of the IIAs concluded by your country contain provisions safeguarding investor's rights or providing for transitional arrangements in case of modifications or amendments of the IIAs?

Yes. For example, Article 27.4 of the Agreement Among the Government of the People's Republic of China, the Government of Japan and the Government of the Republic of Korea for the Promotion, Facilitation and Protection of Investment provides that: "Amendments shall not affect the rights and obligations of the Contracting Parties provided for under this Agreement until the amendments enter into force."

B/Legislative and judicial framework

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

No. There is no known case of such request.

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

No.

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

China notices the growing calls to reform the investor-State arbitration regime, and appreciates the efforts made by CIDS in providing some policy options. We are still making in-depth study on those options and our point of departure is that the investor-State arbitration regime shall be an effective and efficient one striking the proper balance between investor protection and government's right to regulate. This is one of the guiding principles G20 adopted for global investment policymaking this July, and China welcomes and also keeps an open mind on any option that is conducive to the above-mentioned goal.

Without prejudice to China's position on the possible options discussed in the paper, we suggest starting from conducting fact-based analysis with a view to seeking consensus on certain overarching issues before launching any discussion on reform to the current regime. First, what are the main shortcomings of the current ISDS system? Second, what are the underlying causes of the problems? Third, based on the first two steps, we should carefully examine the pro and cons of any proposal in a pragmatic but cautious manner in order to find the most appropriate solution to address such problems without bringing any new systemic challenges. In this process, we should pay special attentions to a few important issues, such as how to ensure the future mechanism to be flexible enough and adapted to the nature of investor-to-state dispute, how to reconcile the future mechanism with the existing system and how to ensure enforcement of the award in the future mechanism.

In addition, China also believes that the procedural shortcomings should not undertake the entire responsibility of the criticism on the current system, and we should take concrete steps to have clearer and more precise substantive obligations in the treaties so that meaningful guidance could be given to the tribunal.

7. Greece

[Original: English]
[Date: 28 December 2016]

A/International Investment Agreements (IIAs)

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

Greece is a party to 44 Bilateral Investment Treaties (BITs). These BITs include provisions on the settlement of investor-States disputes.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs — Question 3: Provisions on appeal to investor-State arbitral awards in IIAs — Question 4: Provisions in IIAs on creation in the future of (a) a

bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

No.

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

The Bilateral Investment Treaties to which Greece is a party do not contain specific provisions on amendment. They contain provisions on entry into force, duration and termination (with a sunset clause).

The EU Regulation 1219/2012, establishing transitional arrangements for bilateral investment agreements between Member States and third countries (Chapter IIII: Authorization to Amend or Conclude Bilateral Investment Agreements) include provisions concerning the authorization of a Member State to enter into negotiations with a third country to amend an existing bilateral investment agreement.

B/Legislative and judicial framework

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

The EU and its Member States have already been engaged in a process of reform of investment policy and in particular of investor-State dispute settlement over the past years. One important element of that reform is the creation of a multilateral mechanism for the settlement of investment disputes which would seek to address some of the concerns which have arisen as regards the existing system. The EU and its Member States are currently engaged in exploratory discussions and reflections on the main goals and priorities of the creation of such a mechanism, both EU-internally and with non-EU countries and we welcome the opportunity to pursue further discussions. In this context we believe that the CIDS research paper sets out a number of interesting options to explore for reforming the existing investor-State dispute settlement system.

8. Japan

[Original: English]
[Date: 29 December 2016]

A/International Investment Agreements (IIAs)

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

Japan is a contracting party to a number of bilateral and multilateral treaties, and most of them include provisions on the settlement of investor-State disputes.

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

No.

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

(a) The Trans Pacific Partnership (TPP) Agreement (not concluded by Japan as of December 2016) addresses the possible creation in the future of an appellate

mechanism for investor-State arbitral awards as follows. “Chapter 9, Investment, Article 9.23: Conduct of the Arbitration — In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 9.29 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 9.24 (Transparency of Arbitral Proceedings).”

(b) No.

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

Some IIAs concluded by Japan contain provisions on the amendments. An example of such provisions is as follows. “Agreement between Japan and the Republic of Colombia for the Liberalization, Promotion and Protection of Investment, Article 44 Amendments — “1. The Contracting Parties may agree on any amendment to this Agreement. 2. Any amendment shall be approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on such date as the Contracting Parties may agree, and shall thereafter constitute an integral part of this Agreement.”

B/Legislative and judicial framework

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

We do not have any legislation which explicitly and specifically provides the procedure to recognize or enforce judgments of international courts. We are not aware of any case in which our domestic courts have been requested to recognize or enforce judgments of international courts.

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

No.

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

Japan considers it premature to make official comments on this paper, because this issue is not formally on the table for discussion in UNCITRAL yet and we should avoid make any prejudice.

9. Mauritius

[Original: English]
[Date: 30 December 2016]

A/International Investment Agreements (IIAs)

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

Mauritius is a party to several bilateral treaties on the protection of foreign investments and these agreements include provisions on the settlement of investor-State disputes.

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

IIAs concluded by Mauritius do not provide for permanent courts or tribunals for resolution of investor-State disputes.

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

Under IIAs concluded by Mauritius, an award made by an arbitral tribunal is final and binding.

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

IIAs concluded by Mauritius do not provide for the possible creation in future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; or (b) a bilateral or multilateral permanent investment tribunal or court.

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

IIAs concluded by Mauritius contain provisions for amendments. IIAs are typically incorporated into the laws of Mauritius by regulations made under section 28A of the Investment Promotion Act. Based on existing regulations, the amendment procedures have not so far been resorted to. IIAs concluded by Mauritius do not contain provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of IIAs. A typical amendment clause provides as follows: "This Agreement may be amended by agreement among both Contracting Parties. Such amendment shall enter into force on the date to be agreed upon by the Contracting Parties."

B/Legislative and judicial framework

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

To the extent that "international courts" refer to courts established by international treaties or conventions, there is no statutory or judicial mechanism whereby judgments of international courts except the International Criminal Court can be recognized or enforced in Mauritius. However, judgments from foreign courts can be recognized and enforced under the Foreign Judgments (Reciprocal Enforcement) Act.

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

Under the International Arbitration Act, a company holding a Global Business Licence (a non-domestic company) may include an arbitration clause in its constitution to the effect that any dispute arising out of the constitution of the company shall be referred to arbitration under the Act. In such a case, any party to the arbitration proceedings may appeal to the Supreme Court on any question of Mauritius law arising out of an award with the leave of the Court.

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

We do not have any comments at this stage but would welcome any follow-up questions.

10. Poland

[Original: English]
[Date: 28 December 2016]

A/International Investment Agreements (IIAs)

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

In the area of the protection of foreign investments Poland is a Party to ca. 60 bilateral treaties and to one multilateral treaty (the Energy Charter Treaty). These treaties contain provisions on investments protection as well as on the dispute settlement mechanism (negotiations during the cooling-off period and possibility to settle the dispute when the arbitration proceeding has already been initiated). There is only one exception — an agreement which regulates the area of commerce and navigation. Moreover, on 30 October 2016, Poland signed the EU-Canada Comprehensive Trade and Economic Agreement (CETA). This treaty also covers investment protection and ISDS.

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

None of the IIAs treaties in force concluded by Poland provide for permanent courts or tribunals (as opposed to ISDS) for the resolution of investor-States disputes. However, such permanent court is envisaged in EU-Canada Comprehensive Trade and Economic Agreement (CETA — not in force yet). CETA establishes a Tribunal composed of fifteen Members that will decide claims submitted with regard to alleged breaches of the investment protection provisions of the agreement (Article 8.27 CETA). It is very hard to assess how this kind of permanent court is going to function. It is even too early to present any details of this court, because it does not exist.

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

None of the IIAs treaties in force concluded by Poland contain provisions whereby investor-State arbitral awards may be subject to appeal (as distinguished from annulment). CETA (not in force yet) establishes Appeal Tribunals to review awards rendered by the Tribunal established under those agreements (Article 8.28 CETA).

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

None of the IIAs treaties in force concluded by Poland addresses the possible creation on the future of a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/nor a bilateral or multilateral permanent investment tribunal or court. In CETA (not in force yet) the Contracting Parties have committed to work towards the creation of a multilateral investment tribunal and/or appellate mechanism (Article 8.29 CETA).

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

Some of the IIAs treaties in force concluded by Poland contain provisions on their amendment or supplement by the mutual agreement of the Contracting Parties. Article 42 of the Energy Charter Treaty contains provisions on the amendment of the agreement. CETA (Art. 30.2) contains provisions on the amendment of the agreement and of its annexes. Moreover, we would like to indicate that final provisions of IIAs treaties

concluded by Poland contain ‘sunset clause’, which allows protection of investment for some years after dissolving of an agreement.

B/Legislative and judicial framework

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

Polish code for civil proceedings (art. 1145) provides for the recognition of the judicial decisions of foreign States. Since 2008 the *de plano* recognition principle is applied. The recognition may be refused only on grounds specified under art. 1146. Art. 1149(1) provides legal basis for the recognition of decisions of other court (or tribunal) of foreign State if taken in civil matter. However, the above statutory framework does not provide ground for the recognition of supra- or international tribunals. Statutory basis for the recognition and enforcement of the international arbitration tribunals awards is in art. 1215 of the Code. The other one is in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards whereof Poland is a signatory.

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

Arbitral awards, be they foreign or national, are subject to same legal requirements. In order to become equivalent to court decision (and to enjoy *res judicata*) they need to be recognized by common court (art. 1212) or the common court has to declare their enforceability (art. 1214). With regard to foreign arbitral award, the hearing is mandatory when the recognition or declaration of enforcement is sought.

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

Options presented in the CIDS research paper have different aspects which are closely inter-linked. Hence it is difficult to indicate a preference for any of them before further discussion about the main goals and priorities.

Reforming investment arbitration and in particular investor-State dispute settlement is recently a subject of many discussions — it is visible especially for EU and its Member States (i.a. during the work on CETA and TTIP). Within the EU still persists discussion on the main goals and priorities in this matter (both EU-internally and with non-EU). Therefore Poland is not able to present any position in regard of the described ISDS mechanisms yet. Consequently, the mechanism elaborated by UNCITRAL can be accepted only as a non-binding guideline.

11. Romania

[Original: English]
[Date: 30 December 2016]

A/International Investment Agreements (IIAs)

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

Romania’s investment agreements, either bilateral or multilateral, include provisions on the settlement of disputes in the form of investor-State arbitration.

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

Romania's investment agreements do not provide for permanent courts or tribunals for the settlement of disputes.

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

Romania's investment agreements do not contain any provisions whereby investor-state arbitral awards are subject to appeal.

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

Romania's new model investment agreement, on the basis of which the new Romania-Senegal BIT is currently being negotiated, does provide for the possibility of creating in the future a multilateral permanent investment tribunal or court.

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

Currently, 6 investment agreements concluded by Romania have provisions on amendment. Of those, only the BIT between Romania and Malaysia has been amended according to those provisions. 29 Agreements were amended although they did not contain a specific amendment clause.

All amendment Protocols were concluded as part of Romania's obligation as an EU Member State to bring its bilateral investment treaties in line with EU legislation. The most commonly encountered provision is the Regional Organization Integration Clause (REIO for short).

Examples of amendment clauses:

Romania-Bosnia and Herzegovina BIT: "This Agreement may be amended by written Agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for the entry into force of the present Agreement."

Romania-Demark BIT: "At the entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirement for the entry into force have been fulfilled"

B/Legislative and judicial framework

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

Romania does not have any specific statutory basis or mechanism for the recognition and enforcement of the judgments of international courts per se (as opposed to the recognition of judgments of foreign courts).

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

Romania's legislation on international arbitration (part IV of the 2009 Civil Code, art 541-1132) does not contain any provisions on appeal, either by State courts or arbitral tribunals, against arbitral awards.

12. Tunisia

[Original: French]
[Date: 28 December 2016]

A/International Investment Agreements (IIAs)

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

Tunisia has concluded an extensive network of bilateral and multilateral treaties on foreign investment protection. Tunisia has concluded almost 63 bilateral investment treaties (BITs), the most recent of which was concluded with Switzerland in 2012 and entered into force in July 2014. The majority of these BITs have entered into force.

Despite efforts by the competent Tunisian authorities to establish a model Tunisian BIT, no such model treaty has yet been established.

Tunisia has also concluded a series of multilateral treaties and is in the process of negotiating an important Deep and Comprehensive Free Trade Agreement (DCFTA) with the European Union which will contain a chapter on investment.

Some of the multilateral treaties which have already been concluded relate exclusively to investment protection and include the following: the 1993 Convention on the encouragement and protection of investments among the countries of the Arab Maghreb Union (AMU); the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference (OIC), which was signed by Tunisia in 1981 and entered into force in 1986; the League of Arab States (LAS) Unified Agreement for the Investment of Arab Capital in the Arab States, concluded in 1980, as amended in 2013.

The majority of these IIAs contain provisions for the settlement of disputes between a host State and foreign investors which refer to international arbitration institutions, including the International Centre for Settlement of Investment Disputes (ICSID) (see BITs concluded with, for example, Turkey, Sweden, the United States of America, France, Italy and Switzerland).

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

Arbitration by permanent courts or tribunals (as opposed to arbitration between investors and States) is provided for under some of the treaties concluded by Tunisia with other Arab States. Article 19 of the Convention on the encouragement and protection of investments among the countries of the Arab Maghreb Union and articles 25 and 28 et seq. of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States refer to the Arab Court of Investment with regard to disputes between an investor and the host State.

Article 29 of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States stipulates: “1 — The Court shall have jurisdiction to settle disputes brought before it by either party to an investment which relate to or arise from application of the provisions of the Agreement. 2 — The disputes must have occurred: (a) Between any State Party and another State Party or between a State Party and the public institutions and organizations of the other parties or between the public institutions and organizations of more than one State Party; (b) Between the persons referred to in paragraph 1 and Arab investors; (c) Between the persons referred to in paragraphs 1 and 2 and the authorities providing investment guarantees in accordance with this Agreement.”

Only a small number of Tunisian BITs provide for recourse to a permanent court. Among the few BITs to contain this provision is the BIT concluded with Kuwait in 2004, in which article 10 provides for recourse to domestic courts of the host State, international arbitration by ICSID under UNCITRAL rules and also the means of resolution provided for in the LAS Unified Agreement for the Investment of Arab Capital in the Arab States concluded in 1980, namely the Arab Investment Court. (See also article 8 of the BIT concluded with Sudan in 2003 and article 5 of the BIT concluded with the Syrian Arab Republic in 2001.)

BITs concluded with Arab States are only available in Arabic.

The first judgment of the Arab Investment Court (which has so far passed judgment on no more than a dozen cases) was in the 2001 case of Adel Bin Saleh Almaddah and Tanmiah for Management and Marketing Consultancy v. the Tunisian State and the Organizing Committee of the Mediterranean Games in Tunis, Arab Investment Court, Case No. 1/1 Q, judgment of 12 October 2004. The court based its jurisdiction in the case on article 29 of the Unified Agreement for the Investment of Arab Capital in the Arab States and on the contract between the parties, but in its ruling rejected the claims of the plaintiff.

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

There are no provisions for an appeal against arbitral awards or against the judgment of a permanent court charged with settling disputes between an investor and a host State. For instance, article 34 of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States stipulates:

> "1. Judgements shall have binding force only with regard to the parties concerned and the dispute on which a decision is given. 2. Judgements shall be final and not subject to appeal. Where there is a dispute as to the meaning or import of a judgement, the Court shall provide its interpretation at the request of any of the parties concerned. 3. A judgement delivered by the Court shall be enforceable in the States Parties, where they shall be immediately enforceable in the same manner as a final enforceable judgement delivered by their own competent courts."

For the Arab Investment Court, this involves a review procedure. This is in accordance with article 35 of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States: "The Court may admit an application for a review of a judgement where the judgement gravely exceeds an essential principle of the Agreement or litigation procedures or where a decisive fact in the case is revealed which was not known at the time of judgement either by the Court or by the party requesting the review. The ignorance of such fact by the said party must not, however, be attributable to his own negligence. Applications must be submitted within six months of the new facts being uncovered and within five years of the delivery of judgement. Review proceedings shall be instituted by a decision of the Court which explicitly confirms the existence of the new fact, sets out the aspects justifying a review and declares that the application is accordingly admissible.

The Court may suspend execution of a judgement which it delivered before deciding to institute review proceedings."

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

There are currently no IIAs concluded by Tunisia which provide for:

(a) A bilateral or multilateral appeal mechanism for arbitral awards between investors and States;

(b) The answer to this question is given in paragraph (2).

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

Some IIAs concluded by Tunisia establish provisions for their amendment.

Article 44 of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States stipulates: "This Agreement may not be amended any earlier than five years from the date of its entry into force. Amendments to this Agreement shall be made with the consent of two thirds of the States Parties and shall enter into force for the ratifying States three months after instruments ratifying the amendments have been deposited by at least five States."

Article 10 of the BIT concluded between Tunisia and Turkey in 1991 also provides that "3 — This agreement may be amended by written agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment."

See also the BIT between Tunisia and Denmark concluded in 1997 (article 13), the BIT between Tunisia and Guinea concluded in 1990 (article 12), the BIT between Tunisia and Mali concluded in 1986 (article 12), the BIT between Tunisia and Niger concluded in 1992 (article 19), the BIT between Tunisia and Togo concluded in 1987 (article 12) and the BIT concluded between Tunisia and Senegal concluded in 1984 (article 12).

These agreements also establish provisions for the protection of investors' rights in the event of the termination of an agreement. Most treaties will include survival clauses ensuring the continuation of the agreement for investments completed before its expiry date (no details are given for the case of modification or amendment).

See, inter alia, article 43 of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States, article 10 of the BIT between Egypt and Tunisia concluded in 1989, article 13 of the BIT between Tunisia and China concluded in 2004, article 12 of the BIT between Tunisia and France concluded in 1997 and article 13 of the BIT between Tunisia and Switzerland concluded in 2012.

B/Legislative and judicial framework

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

Tunisia has a legal framework and a judicial mechanism for recognizing and enforcing the judgments of international courts.

Firstly, it is important to note that, in accordance with article 34 of the LAS Unified Agreement for the Investment of Arab Capital in the Arab States, "3 — A judgement delivered by the Court shall be enforceable in the States Parties, where they shall be immediately enforceable in the same manner as a final enforceable judgement delivered by their own competent courts".

There is no specific judicial mechanism in Tunisia for recognizing and enforcing the judgments of international courts. There is a common law provision that may be applied in such cases: article 11 et seq. of the Code of Private International Law (promulgated by Act No. 98-97 of 27 November 1998).

To our knowledge, no judgment of the Arab Investment Court has required enforcement proceedings in Tunisia.

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

The Arbitration Code promulgated by Act No. 93-42 of 26 April 1993 only provides for an appeal procedure for domestic arbitral awards when the parties have provided for this expressly in the arbitration agreement, and excludes awards of arbitrators acting as mediators ("amiables compositeurs") (see article 39).

Only annulment is provided for an international arbitral award (article 78).

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

Regarding the possibilities of reforming the arbitration regime for disputes between investors and States proposed in the report of the Geneva Center for International Dispute Settlement (CIDS), establishing a permanent international tribunal for investor-State dispute settlement may be an effective means of addressing the lack of consistency among arbitral awards and decisions. This lack of consistency is also attributable to the fragmentation of the substantive regime for protecting international investment. It is therefore important to harmonize the international framework by establishing a balanced international agreement.

Issues which may arise when establishing a permanent mechanism for dispute settlement are whether a sufficient number of States will accede to this new mechanism and the nature of decisions which would be made by this court. Should these decisions be subject to exequatur procedure by the domestic courts of the executing State, which will enable domestic courts to have a level of control, or merely a simplified recognition procedure, as is the case in ICSID arbitral awards?

Another issue which could arise is the composition of this international court. How should judges or arbitrators be chosen and what criteria should be used?