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# Settlement of commercial disputes

## Investor-State Dispute Settlement Framework

## Compilation of comments

**Addendum**

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# III. Compilation of comments

## 23. Belarus

[Original: English]
[Date: 9 January 2017]

A/ International Investment Agreements (IIAs)

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

The Republic of Belarus is a party to the following multilateral treaties regulating investments: 1. Convention on the Settlement of Investment Disputes between the States and Nationals of Other States dated March 18, 1965; 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated June 10, 1958 (the enforcement of arbitral awards in the Republic of Belarus is governed by Chapter 28 of the Code of Economic Procedure); 3. Convention Establishing the Multilateral Investment Guarantee Agency dated October 11, 1985; 4. Energy Charter Treaty dated December 17, 1994; 5. Treaty on cooperation in the field of investment activities within the CIS dated December 24, 1993; 6. Convention on the investor rights' protection dated March 28, 1997.

The Republic of Belarus signed 61 bilateral investment agreements.

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

Bilateral investment agreements of the Republic of Belarus usually include the clause providing for the possibility to submit the dispute to ICSID. No decision has ever been delivered by a permanent court or a tribunal with regard to the bilateral investment agreements of the Republic of Belarus.

As an example of Belarusian treaty practice, Article 9 of the Agreement between the Government of the Republic of Belarus and the Government of the Kingdom of Denmark concerning the Promotion and Reciprocal Protection of Investments, dated March 31, 2004, stipulates as follows: "1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled by negotiations. 2. If any dispute mentioned in paragraph (l) of this Article cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution to: a competent court of the Contracting Party, or the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted; or an ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned; or by arbitration in accordance with the Rules of Arbitration of the

International Chamber of Commerce (ICC). 3. For the purpose of this Article and the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party. 4. Any arbitration under paragraph 2 (b)-(d) of this Article shall, at the request of either Contracting Party, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958. 5. The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute. 6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract. 7. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations".

Article 10 of the Agreement between the Government of the Republic of Belarus and the Government of the Republic of Croatia on the Reciprocal Promotion and Protection of Investments, dated June 26, 2001, stipulates as follows: "1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiation. 2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be, upon the request of the investor, settled as follows: a) by a competent court of the Contracting Party, or b) by conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C. on March 18th, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted; or c) by arbitration by three arbitrators in accordance with the UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned; or d) by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). 3. The award shall be final and binding; it shall be executed according to the national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations. 4. A Contracting Party which is a party to the dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses".

*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*

Belarusian bilateral investment agreements do not contain such provisions.

*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*

Belarusian bilateral investment agreements contain provisions on their amendments. As a general rule, any amendments enter into force under the same procedure that is required for the entry into force of the agreement itself. If an agreement does not contain specific rules for the amendments, then the general regulations set out by the Vienna Convention on the International Treaties are applied. For example, Article 13 of the Agreement between the Government of the Republic of Belarus and the Government of the Kingdom of Denmark concerning the Promotion and Reciprocal Protection of Investments, dated March 31, 2004, stipulates as follows: "At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the internal legal requirements for the entry into force have been fulfilled."

Several Belarusian multilateral investment agreements contain provisions [safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs]. For example, paragraph 2 of Article 10 of the Treaty on cooperation in the field of investment activities within the CIS dated December 24, 1993, stipulates as follows: "In case the change of investment legislation of the Party, receiving investment, or the denunciation of the present Agreement result in the impairment of the terms of the activities of enterprises previously created by the Parties in the territory of said Party, the rules, which applied at the time of registration of such enterprises, remain in force for the following 5 years". Nevertheless currently these provisions are viewed as outdated and discriminating against national investors, therefore the general approach is not to include them into the new agreements. These provisions are also not used in the Belarusian bilateral investment agreements.

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)*

The Supreme Court of the Republic of Belarus is the competent court for recognition and enforcement of arbitral awards under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965 (ICSID Convention). Pursuant to Article 45 of the Economic Procedure Code of the Republic of Belarus cases on recognition and enforcement of foreign courts' awards and foreign arbitral awards concerning business and other economic activities disputes are subject to the jurisdiction of a court that considers economic disputes. A procedure for recognition and enforcement of foreign arbitral awards is governed by Chapters 28 and 29 of the Economic Procedure Code of the Republic of Belarus. Whereas, having regard to the provisions of Article 48 of the Economic Procedure Code of the Republic of Belarus setting the right of the Supreme Court of the Republic of Belarus to initiate proceedings regarding any dispute within the jurisdiction of courts that consider economic disputes, the Supreme Court of the Republic of Belarus is a competent court for recognition and enforcement of arbitral awards in the Republic of Belarus under the ICSID Convention. As far as decisions of international courts such as ICJ are concerned, Belarus has never been handed down a ruling to recognize and enforce. It is presumed, however, that being grounded in international treaty obligations, such rulings should fall under the legislation on international treaties (Law of the Republic of Belarus on International Treaties of the Republic of Belarus of July 23, 2008).

Under the Law all governmental agencies are responsible for implementation and performance of international obligations of Belarus within their area of competence.

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

There is no specific appeal system for the investment arbitration, as the general system of appeal under the Economic Procedure Code of the Republic of Belarus is applied.

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

The Belarusian party recognizes the emerging global demand for the reform of the investor-State arbitration regime, and believes that UNCITRAL is the appropriate multilateral forum to discuss the correspondent issues.

The Belarusian party is convinced that, due to the importance of the topic and the long-lasting consequences of the proposed reform, it is of an utmost necessity that the consultation process is based on the principles of inclusiveness and transparency, while its outcome has to embody a well-defined and consensually shared vision of aims, methods and substance, address all possible concerns, and deliver a clear picture of the modalities and consequences of the mechanism to be adopted.

The Belarusian party is a firm advocate of the idea to enhance a regional dimension, complementing the global investor-State arbitration regime. Establishment of regional institutions as elements of the global system allows for better geographic coverage, decrease in logistical expenses, promotion and development of local expert capacities, encouragement of interaction among different legal systems.

The Republic of Belarus stands ready in principle to consider the possibility of establishing a regional presence of new investor-State arbitration regime for Eastern Europe in due course.

## 24. Colombia

[Original: Spanish]
[Date: 16 January 2017]

A/ International Investment Agreements (IIAs)

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

Colombia is currently a Party to 23 IIAs, 17 of which are in force and 6 of which have been signed, all of which, apart from the free trade agreements (FTAs) with the European Free Trade Association (EFTA) and the European Union, have a mechanism for resolving disputes between investors and the State. In the specific case of the Cooperation Agreement concluded with Brazil, which provides for institutional governance and dispute prevention, a national focal point, or ombudsman, is appointed by each Party to support the investors of the other Party in its territory.

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

Colombia is currently in the process of revising its model IIA to update it and tailor it to the international context. The revision brings together the international investment arbitration experiences of the past decade and reflects a number of important developments. To sum up very briefly, the model seeks to preserve the regulatory powers of the State and regulate the investor-State dispute settlement (ISDS) system,

improving aspects such as transparency and consistency. For further information, we enclose herewith the first draft of this model.

*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*

The 2011 model bilateral investment treaty (BIT) does not contain any such provisions or any such mechanism. However, the 2016 model IIA is expected to make provisions for the legal concept of appeal. In the case of the FTAs with Chile, the Pacific Alliance and the United States, the possibility of designing an appeal mechanism is established.

*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 IIAs concluded by Colombia contain provisions on amendment that take various forms. Depending on the case, use might be made of administrative commissions with binding powers of interpretation with regard to investment arbitration. The general rule is that amendments may be made by written agreement between the Contracting Parties and submitted for ratification. No kinds of safeguards are provided for in case of amendments to the text of an IIA.

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)*

Colombia is a Party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and to the Inter-American Convention on International Commercial Arbitration (1975), which address the recognition of international awards, as well as to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965).

Decisions of the Supreme Court granting recognition of international awards are available at: http://190.24.134.101/corte/wp-content/uploads/2016/10/SC12467-2016.pdf

http://www.oas.org/es/sla/ddi/docs/colombia%20-%20drummond%20ltd%20v%20ferrovias%20en%20liquidacion,%20ferrocariles%20nacionales%20de%20colombia%20s.a..pdf

http://190.24.134.101/corte/wp-content/uploads/2016/10/SC12467-2016.pdf

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

Colombian domestic legislation does not provide for any such concept. The Arbitration Statute of Colombia follows the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law.

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

The paper outlines a number of options that are only now being explored in Colombia.

## 25. Mauritania

[Original: French]
[Date: 5 January 2017]

A/ International Investment Agreements (IIAs)

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

The Islamic Republic of Mauritania has concluded a large number of investment promotion and protection agreements with friendly countries. All of those agreements include provisions on the settlement of any disputes which may arise between the State and investors.

Act No. 52-2012 of 31 July 2012 on the Investment Code contains provisions on the settlement of disputes, in particular in article 30, which states: "All disputes arising out of the interpretation or application of this Code shall be settled through conciliation or, if the parties concerned are unable to reach an agreement, through arbitration or, at the choice of the investor, by the competent Mauritanian courts in accordance with the laws and regulations of Mauritania. Disputes between foreign investors or foreign-controlled enterprises established in Mauritania and the public authorities of Mauritania in relation to this Code may also be resolved through conciliation or arbitration by virtue of either mutual agreement between both parties; agreements and treaties on investment protection concluded between Mauritania and the State from which the investor originates; or arbitration before the International Mediation and Arbitration Chamber of Mauritania (CIMAM) or the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965, ratified by Mauritania."

International agreements generally provide that "any investment dispute arising between one contracting party and an investor of the other contracting party shall be resolved amicably wherever possible". If the dispute cannot be settled amicably, within six months of the date of its notification by one of the contracting parties, the investor shall be entitled to submit the dispute either to the judicial authority of the contracting party to the dispute, or to an ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or to the International Centre for Settlement of Investment Disputes.

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

A permanent arbitration and mediation institution, the purpose of which is to contribute to building the trust required for business development while promoting mediation and arbitration as suitable methods of conflict resolution, has been established through the promulgation of Act No. 2000-06 of 18 January 2000 on the Arbitration Code and of Decree No. 2009-182 of 7 June 2009 on the creation of permanent arbitration and mediation institutions.

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

The IIAs provide that arbitration awards shall be final and binding for the parties concerned.

*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*

The agreements concluded by Mauritania do not provide for the creation in the future of a bilateral or multilateral appellate mechanism for investor-State arbitral awards, but there is nothing to prevent a clause to that effect from being established.

*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 agreements that have been concluded provide for amendments according to the interest of the parties, except for the international treaties that govern intellectual or industrial property rights in force at the time of their signature.

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)*

This issue of recognition can be resolved through bilateral cooperation by means of an agreement between Mauritania and the contracting party, or in accordance with the section of the Code of Civil, Commercial and Administrative Procedure relating to the procedure for the enforcement of judgments.

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

Act No. 2000-06 of 18 January 2000 on the Arbitration Code provides as follows:

"Article 37 — The award may be appealed against, unless the parties have waived their right to appeal [in the arbitration agreement. However, the award cannot be appealed] when the arbitrator has been appointed to decide as amiable compositeur, unless the parties have expressly reserved the right to do so in the arbitration agreement. The appeal against the arbitral award shall be considered and decided in accordance with the rules on the procedure established by the provisions of the Code of Civil, Commercial and Administrative Procedure regarding judicial judgments. If the court upholds the contested arbitral award, it renders it enforceable. If it invalidates the award, it shall rule on the merits and render a new decision.

"Article 38 — When, on the basis of the distinctions made in article 37, the parties have waived their right to appeal or have not expressly reserved the right to do so in the arbitration agreement, an action for annulment of the decision that is considered to be an arbitration award may nevertheless be brought despite any stipulation to the contrary. Annulment action shall be initiated only in the following cases: 1. If the arbitral award was rendered in the absence of an arbitration agreement or on the basis of an invalid or expired agreement; 2. If the arbitral tribunal was improperly constituted or the sole arbitrator was improperly appointed; 3. If the arbitrator ruled without complying with the mandate with which it was entrusted; 4. If the arbitrator failed to comply with a rule of public policy; 5. If the fundamental rules of procedure relating to due process and the adversarial principle were not complied with."

## 26. Thailand

[Original: English]
[Date: 25 January 2017]

A/ International Investment Agreements (IIAs)

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

Thailand is a party to a number of IIAs, both bilateral investment treaties (BITs) and bilateral/regional free trade agreements (FTAs), most of which contain provisions on the settlement of investor-State disputes. Examples include Japan-Thailand Economic Partnership Agreement (JTEPA), Thailand-Australia Free Trade Agreement (TAFTA), Thailand-New Zealand Closer Economic Partnership (TNZCEP), ASEAN Comprehensive Investment Agreement (ACIA), ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and the Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation between the People's Republic of China and ASEAN (ACFTA). It is also noteworthy that Thailand is in the process of negotiating FTAs containing provisions on the settlement of investor-State disputes, including the Regional Comprehensive Economic Partnership (RCEP) Agreement and the Agreement on Investment under ASEAN-Hong Kong Free Trade Agreement (AHKFTA).

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

Many of Thailand's IIAs, as well as its 2013 Model Bilateral Investment Treaty (Model BIT), have provisions allowing for investor-State disputes to be submitted to the competent domestic court in certain circumstances. Article 9(2) of the Thailand-Bahrain Bilateral Investment Treaty, for example, specifies that "If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within three months from the date of request for settlement, the investor concerned may submit the dispute to: (a) the competent court of the Contracting Party for decision; ..."

Another example is Article 8(2) of the Thailand-Israel BIT, which provides that "If any dispute between an investor of one Contracting Party and other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the dispute to any of the following bodies at the option of the investor concerned: (a) The courts of competent jurisdiction of the Contracting Party in whose territory the investment was made; ..."

Similarly, Article 10(5) of Thailand's Model BIT provides that "If the dispute in question cannot be resolved through consultation and negotiations within a period of six months, the investor may submit the dispute, at the investor's choice, for settlement to: a) the competent courts or administrative tribunals of the Contracting Party in whose territory the investment was made, provided that such courts or administrative tribunals have jurisdiction ..."

Thailand's FTAs also contain similar provisions, one example being Article 21(1) of Chapter 11 of AANZFTA, which provides that "A disputing investor may submit a claim referred to in Article 20 (Claim by an Investor of a Party) at the choice of the disputing investor: (a) where the Philippines or Viet Nam is the disputing Party, to the courts or tribunals of that Party, provided that such courts or tribunals have jurisdiction over such claim; ..."

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

Thailand's IIAs and its Model BIT do not contain such provisions.

*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 Thailand's IIAs addresses the possible creation of such mechanisms. The same applies for the Model BIT.

*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*

Most of Thailand's IIAs contain provisions on amendment. The form and substance of these provisions differ across different lIAs. Some IIAs simply provide that "[this Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties" (see, for example, Article IX of Thailand-Indonesia BIT and Article 13 of Thailand-DPRK BIT).

Others adopt a more detailed formulation, such as "This Agreement may be amended in writing by mutual consent of the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other Contracting Party in writing that it has completed all internal requirements for the entry into force of such amendment' (see, for example, Article 14 of Thailand-Jordan BIT and Article 14 of Thailand-Myanmar BIT). A more flexible formulation can be found in Article 6 of Chapter 18 of AANZFTA, which provides that "[t]his Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed among them".

None of Thailand's lIAs contains provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the lIAs. However, in the case of termination, some lIAs, such as Thailand-Hungary BIT, provide for a ten-year "survival" ("sunset") period for investments made prior to the date of termination of the Treaty.

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)*

There is no existing statutory basis or judicial mechanism in Thailand to recognize and enforce judgments of international courts.

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

Thailand's Arbitration Act B.B. 2545 (2002) does not provide a mechanism for appeal against arbitration awards. This means that arbitral awards are final and binding in Thailand. However, Section 45 of the Arbitration Act allows for appeals against an order or judgment of the competent court, which has been requested to enforce arbitration awards, in the following circumstances: (1) The recognition or enforcement is contrary to public policy; (2) The order or judgment is contrary to the provisions of law concerning public policy; (3) The order or judgment is not in accordance with the arbitral award; (4) The judge who sat in the case gave a dissenting opinion; or (5) The order is an order concerning provisional order measures for protection under Section 161 of the Arbitration Act.

The right to appeal pursuant to the Act is a statutory right and the parties are unable to exclude it by way of agreements.

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

Thailand welcomes the preliminary analyses made in the CIDS research paper, and would like to suggest that further reflections be made on the following issues:

(l) Utility of an ITI

While having one single investment tribunal to resolve investment disputes across all investment treaties can potentially help ensure consistency in international investment law and the interpretation of investment treaties, it still needs to be considered whether having one single forum would be an efficient and sufficient way for resolving investor-State disputes. Particular attention might be paid to the issue of whether such a forum can adequately cater for country-specific situations and concerns. Additionally, since it is suggested that an ITI should be established as a permanent organization rather than an ad hoc arbitration body, there are important matters, both substantive and administrative, that need to be further considered, including the structure of the secretariat, the source of funding, the ITI's rules of procedure, the qualifications of arbitrators, and the possible mechanisms for enforcing the final arbitral awards.

More fundamentally, it should be recognized that one of the main purposes of using arbitration as a means to resolve disputes is to avoid having to resort to the formal and often lengthy process in domestic courts. In principle, arbitration is driven by "party autonomy" and can be customized in accordance with the parties' mutual agreement, thus offering flexibility and allowing for relatively fast settlement. The creation of one single arbitration forum may take away this flexibility. Importantly, under existing arbitration mechanisms the parties can select arbitrators with specific expertise, reputation, and competence to resolve their disputes. In contrast, the decision-makers of the envisaged ITI the permanent body-would not be selected by all parties. Doubts might therefore arise as to the suitability of the persons acting as arbitrators, and the relevant procedures may no longer depend on the parties' satisfaction but on the rules set by the permanent body. Moreover, the costs associated with using the ITI's mechanism — travelling costs, legal fees, tribunal fees and other expenses — as well as the estimated time needed for resolving each case are not yet determined. The amount of expenditure and time involved might be so substantial that the new mechanism becomes impractical, which is to be contrasted with normal arbitral proceedings, whereby the time and costs involved can be roughly estimated by considering the rules chosen by the parties.

(2) Appeal Mechanism (AM) and the establishment of an Opt-in Convention

With regard to the proposed creation of a single Appeal Mechanism (AM) to serve as appellate tribunal for investor-State arbitral awards across all States' IIAs, further study may be needed to consider whether the introduction of an appeal procedure would unreasonably increase the costs and the length of proceedings. Such a study should also seek to further justify why an AM is desirable, given that it would jeopardize the finality of arbitral awards, which is one of the core advantages of arbitration.

It is also important to note that, while most arbitration regimes exclude the possibility of appeals against arbitral awards, there is an increasing number of investment treaties that include provisions for appellate review. Thus, it is necessary to consider how the appellate mechanism envisaged by the CIDS research paper would differ from the existing mechanisms as well as the relationship between the new appellate mechanism and the existing ones. A related issue warranting further study is the relationship between the new appellate mechanism (and the envisaged Opt-in Convention) and the

operation of the New York Convention 1958, in particular the issue of whether the Convention and existing arbitration rules need to be amended.

Other matters that might benefit from a further study are (1) whether transitory measures, especially measures relating to an appeal against awards made prior to the establishment of the appellate mechanism and of mechanisms for recognition and enforcement of such awards by a domestic court are needed and (2) whether a mechanism for an exercise of the host State's right to appeal is needed in case where the host State unilaterally offers to investors the right to appeal under the Opt-in Convention but the home State is not a party to the Opt-in Convention.

(3) Other Comments

While the establishment of an ITI may have several benefits, it might still be worth exploring options other than creating a new mechanism in order to address the challenges associated with existing mechanisms, especially when it is considered that several questions and concerns surrounding the establishment of an ITI and an AM are yet to be addressed. One such option is to seek to resolve the problems with the existing mechanisms internally within the respective arbitration regimes.