The Bilateral Investment Treaty between Spain and South Korea: Legal Framework

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1. INVESTOR AND INVESTMENT CONCEPTS

Investor

A) Individual: residence (Art. 1.1)

B) Legal person: residence (Art. 1.1)
1. INVESTOR AND INVESTMENT CONCEPTS

Investment

Broad definition:
A) Direct investment + Portfolio investment (Art. 1.2)

B) Movable and immovable property, mortgages, shares, intellectual property rights…(Art. 1.2)
2. TERRITORIAL AND TEMPORAL APPLICATION

Territorial application

Broad concept
(any territory subject to the parties’ jurisdiction)
(Art. 1.4)
2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

A) **Investments** made *before* and *after* the entry into force of the BIT (Art. 11)

B) **Disputes** arisen *after* the entry into force of the BIT (Art. 9)
2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

In case of termination

Investments made during the term of the BIT will be protected 10 additional years (Art. 12.3)
3. THE DUTIES OF PROMOTION AND PROTECTION

Promotion + Admission

general clause
(Art. 2.1)
3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

A) Fair and Equitable Treatment (Art. 3)

B) National Treatment (Art. 3)

C) Most-Favored Nation Treatment (excludes Maffezini effect) (Art. 3)
3. THE DUTIES OF PROMOTION AND PROTECTION

D) Compensation for losses (Art. 4)

E) Discriminatory Expropriation/Nationalization/Measure of equivalent effect (Art. 5)

F) Repatriation of investments (Art. 6)
3. THE DUTIES OF PROMOTION AND PROTECTION

Exceptions to MF Treatment

A) Any customs union/free trade area (Art. 3.3)

B) International taxation agreements (Art. 3.4)
4. DISPUTE SETTLEMENT

Inter State (Art. 10)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal
4. DISPUTE SETTLEMENT

Investor - State (Art. 9)

No fork-in-the-road

UNCITRAL Tribunal

ICSID Tribunal
5. OTHER PROVISIONS

Subrogation

State of origin (or designated Agency) may guarantee and pay their national investors and then claim or exercise rights against the Host State (Art. 8).
5. OTHER PROVISIONS

Favor inversionis

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. 7)