KOREA-AUSTRALIA
FREE TRADE AGREEMENT

Factsheet: Investment

The Korea-Australia Free Trade Agreement (KAFTA) improves opportunities and protections for Australian investors in Korea. Under KAFTA, Korea opens further its economy to Australian investors through the progressive reduction of market access barriers in key sectors including:

- telecommunications;
- legal services; and
- accounting and tax agency services.

KAFTA provides enhanced protections and certainty for Australian investors in Korea (and for Korean investors in Australia) with provisions to ensure non-discrimination, and protection and security for investments. In particular:

- all forms of investments are protected, including enterprises, shares and stocks, debt instruments, property rights and intellectual property;
- Australian investors and investments may not be treated less favourably, in like circumstances, than Korean investors with respect to the establishment, acquisition, operation and sale of investments in Korea, subject to certain exceptions;
- investments may not be expropriated or nationalised in the absence of prompt, adequate, and effective compensation; and
- investments must be treated in accordance with an internationally accepted minimum standard of treatment, which includes obligations of fair and equitable treatment and full protection and security of investments.

These commitments can be enforced directly by Australian investors (and equally by Korean investors) through an investor-State dispute settlement mechanism (ISDS).

KAFTA promotes increased Korean investment in Australia

Korea's total investment in Australia was worth $26.3 billion at the end of 2017. KAFTA promotes an increase in the flow of Korean investment into Australia by liberalising the screening threshold at which private Korean investments in non-sensitive sectors are considered by the Foreign Investment Review Board from $252 million to $1,094 million, consistent with the threshold provided to Japan and China.
Under KAFTA Australia:

- retains the ability to screen investments in sensitive sectors, including media, telecommunications and defence related industries at lower levels, and all direct foreign government investments regardless of value; and
- reserves policy space to screen proposals for foreign investment in agricultural land at $15 million and in agribusinesses at $55 million.

ISDS does not apply to decisions made concerning investments which are subject to review under Australia's foreign investment policy.

Fact sheet last update: August 2018
More information on the Korea-Australia Free Trade Agreement
is available at www.dfat.gov.au/fta/kafta

Australian Government

AUSTRALIA OPEN FOR BUSINESS

ISDS

- Investment obligations can be enforced directly by Australian investors (and by Korean investors) through an ISDS mechanism. An ISDS claim can only be made on the basis of a breach of an investment obligation or commitment. It cannot be based on a breach of an obligation in other parts of KAFTA such as the intellectual property or environment chapters.
- The KAFTA Investment Chapter and ISDS provisions include explicit safeguards to protect legitimate public welfare regulation, including in areas such as public health, and the environment. These include: safeguards built into the Investment Chapter obligations; 'reservations' which allow Australia to reserve policy space in sensitive areas; general exceptions; and procedural safeguards built into the ISDS mechanism.
- ISDS does not apply to decisions made concerning investments which are subject to review under Australia's Foreign Investment Framework.