

МЕЖДУНАРОДНОЕ ПРАВО

INTERNATIONAL LAW

Research Article

УДК 34

DOI 10.33184/pravgos-2022.2.17

ABADIKHAH Mostafa

Qom university, Iran, abadikhahmostafa@gmail.com, <https://orcid.org/0000-0003-3520-9309>

INVESTMENT TREATIES LANGUAGES ON INTELLECTUAL PROPERTY RIGHTS: A COMPARATIVE STUDY OF THE REPUBLIC OF KOREA'S BITS AND RUSSIAN FEDERATION'S BITS

Abstract. Today, intellectual property is one of the most important types of investment and has been considered in many investment agreements. The Republic of Korea (ROK) and the Russian Federation (RF) have paid attention to intellectual property in their investment agreements. However, the current languages to the intellectual property remain ambiguous. *Purpose:* In this paper, we intend to examine the current languages to the intellectual property rights in the bilateral investment treaties of the ROK and the RF. Hence, the paper focuses on the fundamental question, namely, what are the languages to the intellectual property rights in the BITS? *Methods:* general scientific methods of theoretical knowledge, as well as general logical methods and research techniques are used in analyzing the Bilateral

Investment Treaties (BITS) of the mentioned states. *Results:* Finally, we concluded that both states have adopted two absolute and conditional languages to the intellectual property rights, and the comprehensive language is the conditional one.

Keywords: intellectual property rights, BIT, language, Republic of Korea, Russian Federation

For citation: Abadikhah M. Investment Treaties Languages on Intellectual Property Rights: A comparative study of the Republic of Korea's BITS and Russian Federation's BITS. *Pravovoe gosudarstvo: teoriya i praktika = The Rule-of-Law State: Theory and Practice*, 2022, no. 2, pp. 160–168. DOI 10.33184/pravgos-2022.2.17 (In Russian).

АБАДИХА Мостафа

Университет Кум, Иран, abadikhahmostafa@gmail.com, <https://orcid.org/0000-0003-3520-9309>

ЯЗЫКИ ИНВЕСТИЦИОННЫХ ДОГОВОРОВ О ПРАВАХ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ: СРАВНИТЕЛЬНОЕ ИССЛЕДОВАНИЕ ДВУСТОРОННИХ ИНВЕСТИЦИОННЫХ ДОГОВОРОВ РЕСПУБЛИКИ КОРЕЯ И РОССИЙСКОЙ ФЕДЕРАЦИИ

Аннотация. Интеллектуальная собственность сегодня является одним из важнейших видов инвестиций и предметом международных инвестиционных договоров. Республика Корея и Российская Федерация тоже уделяют внимание вопросам интеллектуальной собственности при заключении инвестиционных соглашений. Между тем термины, касающиеся интеллектуальной собственности, в разных языках остаются неоднозначными. *Цель:* рассмотреть существующие подходы к формулировке прав интеллектуальной собственности в двусторонних инвестиционных договорах Республики Корея и Российской Федерации, уделив особое внимание изучению фундаментального вопроса о языках, на которых в двусторонних инвестиционных договорах изложены права интеллектуальной собственности. *Методы:* общенаучные методы теоретическо-

го познания, общелогические методы и приемы исследования. *Результаты:* по результатам исследования сделан вывод о том, что оба государства использовали абсолютный и условный языки в договорах о правах интеллектуальной собственности, причем условный язык является более полным.

Ключевые слова: права интеллектуальной собственности, двусторонние инвестиционные договоры, язык, Республика Корея, Российская Федерация

Для цитирования: Абадиха М. Языки инвестиционных договоров о правах интеллектуальной собственности: сравнительное исследование двусторонних инвестиционных договоров Республики Корея и Российской Федерации / М. Абадиха // Правовое государство: теория и практика. – 2022. – № 2. – С. 160–168. DOI 10.33184/pravgos-2022.2.17.

Introduction. The Republic of Korea (ROK) has concluded 105 Bilateral Investment Treaties (BITs) since the 1960s¹. The Russian Federation has also concluded 84 BITs since the late 1980s². One of the most important issues in the text of all these treaties is the intellectual property rights. In fact, the relevant authorities know that issues related to the intellectual property as a type of investment should be

protected under the BITs³. Various types of intellectual property have been covered by the treaties of the ROK and RF. As art 1(1)(d) of the *Korea, Republic of - Kyrgyzstan BIT (2007)* states, "investment means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and in particular, though not exclusively, includes...(d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-

¹ For more information, see, UNCTAD, International Investment Agreements Navigator, Bilateral investment agreements of ROK, available at : <https://investmentpolicy.unctad.org/international-investment-agreements/countries/111/korea-republic-of> (accessed: 4/24/2022).

² For more information, see, UNCTAD, International Investment Agreements Navigator, Bilateral Investment Agreements of RF, available at : <https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation> (accessed: 4/25/2022).

³ See, Henning Grosse Ruse-Khan, Protecting intellectual property rights under BITs, FTAs and TRIPS: Conflicting regimes or mutual coherence? Part V - Engagement with cross-cutting issues, *Evolution in Investment Treaty Law and Arbitration*, Edited by Chester Brown and Kate Miles, Cambridge University Press, December 2011, pp 485-515.

how, and goodwill”¹. Also, art 1(a)(vi) of the *Armenia - Korea, Republic of BIT* (2019), states, “investment means every kind of asset in the territory of one Contracting Party, owned or controlled directly or indirectly by an investor of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the former Contracting Party, including, though not exclusively:... (vi) intellectual property rights”² the same goes for art 1(1)(d) of the *Morocco - Russian Federation BIT* (2016), as states, “Investments” shall mean any kind of assets invested by investor of the State of one Contracting Party in the territory of the State of the other Contracting Party in accordance with the laws and regulations of the State of the latter Contracting Party and shall include, in particular, though not exclusively:... d) intellectual property rights, including copyrights, patents, trademarks, trade names, industrial designs, technical processes, know-how”³. In fact, these articles state the types of the intellectual property and indicate which type of intellectual property is protected by the current agreement. In addition, there are two important points in these articles: First, the investment agreement refers to intellectual property and its types within the definition of the investment. Second, each of these articles has a different expression. According to these two points, two hypotheses are made in the paper: First, the investment agreements of the ROK do not provide any definition of intellectual property. Second, there are two approaches to the intellectual property rights under the BITs of the ROK and RF.

In accordance with the hypotheses and in order to answer the main question, namely what are the languages to the intellectual property rights in the BITs. The paper uses the quantitative

and qualitative methods and in line with the methods, analyzes all South Korean and Russian BITs. In this way, the paper proceeds in four steps: the first part focuses on the definition of the IP and its types under the mentioned BITs. The second part provides the types of the languages to the IP rights within the BITs. In fact, in this part, the paper focuses on two languages, namely, absolute and conditional. The third part analyzes the languages in this regard. The last one contains the conclusions we have arrived at.

The Definition of the IP rights under the BITs of ROK and RF. There is no definition of intellectual property under the Korean and Russian BITs. However, the BITs have addressed intellectual property under the definition of investment and have protected the intellectual property as kind of investment. As art 1(1)(e) of the *Kenya - Korea, Republic of BIT* (2014), states, “investment means every kind of asset in the territory of one Contracting Party, owned or controlled directly or indirectly by an investor of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the former Contracting Party, including, though not exclusively:... (e) intellectual property rights including rights with respect to copyright, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill”⁴. Also, the art 1(1)(d) of the *China - Korea, Republic of BIT*, states, “investment means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and, in particular, though not exclusively, includes:... (d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill”⁵. Furthermore, the art 1(1)(d) of the *Iran - Russian Federation BIT* (2015), states, “The term “investment” refers to any kind of asset, invested by the investors of one Contracting Party in the territory

¹ Korea, Republic of - Kyrgyzstan BIT, art 1(1)(d), date of signature: 19/11/2007, date of entry into force: 08/07/2008.

² Armenia - Korea, Republic of BIT, art 1(a)(vi), date of signature: 19/10/2018, date of entry into force: 03/10/2019.

³ Morocco - Russian Federation BIT, art 1(1), date of signature: 15/03/2016, not in force.

⁴ Kenya - Korea, Republic of BIT, art 1(1)(e), date of signature: 08/07/2014, date of entry into force: 03/05/2017.

⁵ China - Korea, Republic of BIT, art 1(1)(d), date of signature: 07/09/2007, date of entry into force: 01/12/2007.

of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including the following:... (d) intellectual property rights such as, in particular, copyrights, patents, utility models, industrial designs, trade marks and names and know-how”¹. As it seems, these articles do not provide a definition of the intellectual property rights, and only describe its types as types of the investment. Therefore, in order to achieve the definition, it is necessary to refer to other related regulations, such as the international regulations in which the ROK² and RF³ have acceded to or the domestic regulations of them, or related authorities like Korean intellectual property office (KIPO).

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the most comprehensive multilateral agreement in this regard. It plays a central role in facilitating trade in knowledge and creativity, in resolving trade disputes over IP, and in assuring WTO members the latitude to achieve their domestic policy objectives. The Republic of Korea is a party to this Agreement⁴. So we can refer to this agreement to get the definition. According to the TRIPS, “Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time”⁵. Another definition used in the domestic legal system of South Korea, the Korean Intellectual Property Office states, “intellectual property is a term referring to a brand, invention, design or other kind of creation, which a

person or business has legal rights over”⁶. Thus, property that is the results of thought, namely, intellectual activity is called intellectual property⁷. Almost all businesses own some form of IP, which could be a business asset⁸.

Types of the languages to the IP rights under the BITs of the ROK and RF. In order to reach the languages contained within the Korean and Russian BITs, we have reviewed all of the related BITs. Therefore, after reviewing 184 treaties, we concluded that the mentioned BITs are classified into two groups. The basis of this classification is a reference to national laws and regulations. In fact, the treaties in this regard, either refer to national laws or do not so. Hence, two languages are created and we call them absolute and conditional.

BITs with the Absolute language. In fact, in this approach, the treaties do not refer to the domestic laws and only absolutely mention the types of intellectual property. Art 1(1)(d) of the *Gabon - Korea, Republic of BIT (2007)*, provides, that “investment means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and, in particular, though not exclusively, include:... (d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill”⁹. Also, art 1(1)(d) of the *Azerbaijan - Korea, Republic of BIT*, states, “investments means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and, in particular, though not exclusively, include: ... (d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical

¹ Iran - Russian Federation BIT, art 1(1)(d), date of signature: 23/12/2015, date of entry into force: 06/04/2017.

² Date of acceptance: 24 January 2007, see, Members and dates of acceptance, available at: https://www.wto.org/english/tratop_e/trips_e/amendment_e.htm (accessed 4/25/2022).

³ Date of acceptance: 22 September 2017.

⁴ WTO, TRIPS — Trade-Related Aspects of Intellectual Property Rights, available at: https://www.wto.org/english/tratop_e/trips_e/trips_e.htm (accessed: 4/24/2022).

⁵ WTO, What are the intellectual property rights?, available at: https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm (accessed: 4/24/2022).

⁶ Korean Intellectual property office (KIPO), intellectual property rights in the Republic of Korea, April 2013, p 3.

⁷ Doborah E. Bouchoux, Intellectual property (the law of trademarks, copyrights, patents, trade secrets), fourth edition, DELMAR GENGAR learning, Georgetown University, 2013, p 3.

⁸ Op.cit.

⁹ Gabon - Korea, Republic of, art 1(1), date of signature: 10/08/2007, date of entry into force: 09/08/2009.

processes, trade secrets and know-how, and goodwill”¹. The same goes for art 1(1)(d) of the *Japan - Russian Federation BIT (1998)* as states, “The term “investment” comprises every kind of asset including:... (d) intellectual property rights including patents, trademarks, industrial designs, layout-designs of integrated circuits, trade names, ‘indications of source or appellations of origin and undisclosed information”². It is clear that there is no reference to national law in the texts of these articles³. In the absolute language, the legislators only pay attention to the types of the investments and do not consider any other conditions in this regard⁴.

BITs with the Conditional language. In this type of approach, which the paper calls conditional language, in fact, in addition to mentioning the types of investments, it also refers

¹ Azerbaijan - Korea, Republic of BIT, date of signature: 23/04/2007, date of entry into force: 25/01/2008.

² Japan - Russian Federation BIT, art 1(1), date of signature: 13/11/1998, date of entry into force: 27/05/2000.

³ Also, see, the Algeria - Russian Federation BIT (2006), the Bulgaria - Russian Federation BIT (1993), the Russian Federation - United States of America BIT (1992), the Korea, Republic of - Russian Federation BIT (1990), the Russian Federation - Switzerland BIT (1990), the Russian Federation - Spain BIT (1990), the France - Russian Federation BIT (1989), and the Russian Federation - United Kingdom BIT (1989), The texts of all the agreements are available at : <https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation> (accessed 5/26/2022).

⁴ The same goes for the Korea, Republic of - Kyrgyzstan BIT (2007), BLEU (Belgium-Luxembourg Economic Union) - Korea, Republic of BIT (2006), Congo - Korea, Republic of BIT (2006), Korea, Republic of - Libya BIT (2006), Guyana - Korea, Republic of BIT (2006), Bulgaria - Korea, Republic of BIT (2006), Congo, Democratic Republic of the - Korea, Republic of BIT (2005), Korea, Republic of - Mauritania BIT (2004), Burkina Faso - Korea, Republic of BIT (2004), Korea, Republic of - Kuwait BIT (2004), Albania - Korea, Republic of BIT (2003), Korea, Republic of - Viet Nam BIT (2003), Korea, Republic of - Netherlands BIT (2003), Jamaica - Korea, Republic of BIT (2003), Korea, Republic of - Trinidad and Tobago BIT (2002), Japan - Korea, Republic of BIT (2002), Korea, Republic of - Mexico BIT (2000), Honduras - Korea, Republic of BIT (2000), Korea, Republic of - Nicaragua BIT (2000), The texts of all the agreements are available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/111/korea-republic-of> (accessed 5/26/2022).

to national laws and regulations. The BITs with the Conditional language identify kinds of investments if they comply with the national laws and regulations. Therefore, in this approach, the mentioned condition is referring to the domestic legal system. These agreements use the following terms to refer to national laws: “... provided that the investment has been made in accordance with the laws and regulations of the former Contracting Party...” or “... every kind of asset invested by investors... in accordance with the legislation of the latter Contracting Party...” or “... rights recognized by the laws of the Contracting Parties...” or “... in accordance with the latter Contracting Party's legislation...” or “... in conformity with the latter's legislation...”. As, art 1(1)(f) of the *Korea, Republic of - Myanmar BIT (2014)* states, “investment means every kind of asset in the territory of one Contracting Party, owned or controlled directly or indirectly by an investor of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the former Contracting Party, including, though not exclusively:... (f) intellectual property rights”⁵. Also, art 1(1)(d) of the *Korea, Republic of - Mauritius BIT*, states, “investment means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party and in particular, though not exclusively, includes: ... (d) intellectual property rights such as industrial property rights, copyrights, patents, utility model patents, designs, trade-marks, trade-names, technical processes, know-how, and goodwill”⁶. Furthermore, art 1(1)(d) of the *Korea, Republic of - Lebanon BIT* states, “ intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, technical processes, know-how and goodwill, as well as other similar rights

⁵ Korea, Republic of - Myanmar BIT, art 1(1), date of signature: 05/06/2014, date of entry into force: 31/10/2018.

⁶ Korea, Republic of - Mauritius BIT, art 1(1), date of signature: 18/06/2007, date of entry into force: 09/05/2008.

recognized by the laws of the Contracting Parties”¹. Also, art 1(b) of the *Russian Federation - Yemen BIT* (2002) states, “ Term "investments" shall mean all kinds of assets invested by investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter Contracting Party's legislation and in particular:... exclusive rights to intellectual property (copyrights, patents, industrial designs, models, trademarks and service marks, technology, information having commercial value and "know-how")”². The same goes for art 1(1) of the *Russian Federation - Ukraine BIT*, as it states, “Investments shall denote all kinds of property and intellectual values, which are put in by the investor of one Contracting Party on the territory of the other Contracting Party in conformity with the latter's legislation, and in particular: ... c)rights to objects of intellectual property, including authors' copyrights and related rights, trade marks, the rights to inventions, industrial samples, models and also technological processes and know-how”³. These articles correctly show that an investment is acceptable when it is in accordance with the national law⁴. In other words, domestic legal

system plays an important role and should undoubtedly be considered⁵.

Analysis of the languages. As a result, in connection with the IP rights in BITs of the ROK, there are two main languages, including the absolute and conditional. The paper has analyzed the BITs of the ROK, except the treaties were in negotiations or those don't exist their texts because of termination, like *Korea, Republic of - Zimbabwe BIT* (2010)⁶, *Korea, Republic of - Romania BIT* (2006)⁷, *Congo, Democratic Republic of the - Korea, Republic of BIT* (1990)⁸, the *China - Russian Federation BIT* (1990)⁹, or the *Denmark - Russian Federation BIT* (1990)¹⁰. Hence, although the ROK has 105 BITs (including those in force, signed and terminated), 102 agreements are available. Also, Russian Federation has 84 BITs but were analyzed 82 of them¹¹. The follow-

⁵ The same goes for the *Korea, Republic of - Uzbekistan BIT* (2019), the *Armenia - Korea, Republic of BIT*(2018), the *Kenya - Korea, Republic of BIT* (2014), the *Cameroon - Korea, Republic of BIT* (2013), the *Colombia - Republic of Korea BIT* (2010), the *Korea, Republic of - Zimbabwe BIT* (2010), the *China - Korea, Republic of BIT* (2007), the *Dominican Republic - Korea, Republic of BIT* (2006), the *Croatia - Korea, Republic of BIT* (2005), The texts of all the agreements are available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/111/korea-republic-of> (accessed 5/26/2022).

⁶ *Korea, Republic of - Zimbabwe BIT*, date of signature: 24/05/2010, date of entry into force: 07/04/2021.

⁷ *Korea, Republic of - Romania BIT* (2006), date of signature: 06/09/2006, date of entry into force: 11/01/2008.

⁸ *Congo, Democratic Republic of the - Korea, Republic of BIT* (1990), date of signature: 19/07/1990, not in force.

⁹ *China - Russian Federation BIT*, Terminated, date of signature: 21/07/1990, date of entry into force: 26/07/1991.

¹⁰ *Denmark - Russian Federation BIT* (1990), Terminated, date of signature: 01/05/1990, not in force.

¹¹ In fact, our main source in this paper for downloading the text of the treaties is the official website of UNCTAD. A copy of every concluded investment agreement is submitted to UNCTAD and UNCTAD uploads it on its official website. However, the text of some of the agreements are not available on the UNCTAD website for various reasons (e.g. Some of them are still in the negotiation process or Some of them have terminated).

¹ *Korea, Republic of - Lebanon BIT*, art 1(1), date of signature: 05/05/2006, date of entry into force: 21/12/2006.

² *Russian Federation - Yemen BIT*, art 1(b), date of signature: 17/12/2002, date of entry into force: 21/07/2005.

³ *Russian Federation - Ukraine BIT*, art 1(1), date of signature: 27/11/1998, date of entry into force: 27/01/2000.

⁴ The same goes for the *State of Palestine - Russian Federation BIT* (2016), the *State of Palestine - Russian Federation BIT* (2016), the *Iran, Islamic Republic of - Russian Federation BIT* (2015), the *Cambodia-Russian Federation BIT*(2015), the *Azerbaijan - Russian Federation BIT* (2014), *Bahrain - Russian Federation BIT* (2014), *Guatemala - Russian Federation BIT* (2013), the *Russian Federation - Uzbekistan BIT* (2013), the *Russian Federation - Zimbabwe BIT* (2012), the *Nicaragua - Russian Federation BIT* (2012), the *Equatorial Guinea - Russian Federation BIT* (2011), *Russian Federation - Singapore BIT* (2010), The texts of all the agreements are available at : <https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation> (accessed 5/26/2022).

ing charts can show the percentages of every language under the BITs:



Figure 1. The model of languages on IP rights under the BITs of the ROK



Figure 2. The model of languages on IP rights under the BITs of the RF

The choice of the approach in agreements depends on the negotiations of the parties [1, p. 27]. BITs with an absolute language to the IP rights, in fact, only state kinds of IP rights. BITs with a conditional language to IP rights, not only mention kinds of IP rights, but also refer to the national law. Therefore, in comparing the two approaches, the conditional language is more comprehensive, since the conditional language mentions a condition that, if not mentioned, may be confusing. It should be noted that whether or not the agreement refers to national regulations, intellectual property rights are related to the domestic legal system of the parties to an investment agreement. In fact, IP law is designed to address the

needs of a country within its territorial boundaries, and thus, IP rights are domestic in nature¹. Therefore, investors should refer to the national law of the host government to know the dimensions of intellectual property rights. However, if the investment agreement does not mention national law, the investor may be confused about the competent law.

Respectively, the ROK and RF have so far concluded 105 and 84 BITs. Although both states have used both languages in their treat-

¹ Pratyush Nath Upreti, *The Role of National and International Intellectual Property Law and Policy in Reconceptualising the Definition of Investment*, Max Planck Institute for Innovation and Competition, Springer, 27 January 2021, p 106.

ties, Russia has performed better in this regard. First, the absolute language within the BITs of the ROK and RF amounts to 59 % and 11 %, respectively, whereas the conditional language of them amounts to 41 % and 89 %, respectively. Therefore, Russia has chosen a comprehensive approach and has used a conditional language in most of its treaties. It

means, Russia has concluded 73 agreements with a conditional language and only 9 with absolute one. By contrast, Korea has concluded less than half of its agreements with conditional approach (41 out of 102) and more than half of them with absolute one (61 out of 102). A diagram that follows shows the above data in comparison:

Countries	ROK: 102 BITs	RF: 82 BITs
Approaches		
Absolute	61 59 %	9 11 %
Conditional	41 41 %	73 89 %

Conclusion. Today, there is no definition of intellectual property rights in the text of the Russian or Korean BITs, and the definition of these rights should be found in other relevant documents. The important point on Russian and Korean BITs is that all agreements pay attention to intellectual property rights. Thus, although there is no definition of intellectual property rights in these agreements, intellectual property is nevertheless considered as a kind of investments. As art 1(1)(e) of the *Kenya - Korea, Republic of BIT (2014)*, states, "investment means every kind of asset in the territory of one Contracting Party, owned or controlled directly or indirectly by an investor of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the former Contracting Party, including, though not exclusively:... (e) intellectual property rights including rights with respect to copyright, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill". Also, art 1(1)(d) of the *Iran, - Russian Federation BIT (2015)*, states, "The term "investment" refers to any kind of asset, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including the following:... (d) intellectual property rights such as,

in particular, copyrights, patents, utility models, industrial designs, trade marks and names and know-how."

In addition, by examining the BITs of both states, we came to a conclusion that there are two approaches to intellectual property rights in these treaties, which we call absolute and conditional. In accordance with the absolute language, the types of the IP rights are mentioned under the definition of the investments, however, no reference is made to the national law of the parties. Conversely, according to the conditional language, types of the IP rights are mentioned and, in addition, reference is made to the national law of the parties. In this regard, South Korea has concluded 41 BITs with a conditional language and 61 agreements with an absolute one. The Russian Federation has concluded 73 BITs with the conditional language and 9 BITs with the absolute one. Comparing the two countries, we found that Russia performed better than South Korea. since it paid more attention to the conditional language. In fact, the conditional approach is better than the absolute one, because it clearly states that reference to domestic law is also required. But the absolute approach does not mention such a condition, and this may be problematic. In any case, intellectual property rights rely on the domestic legal system of the states and investors must pay attention to the national law of the host states in this regard. For example, if an

investor wants to register a trademark, he must comply with the national law of the host state. Since the host state does not accept a trademark that is not in accordance with its domestic custom or domestic law.

References

1. Abadikhah M. Applying the foreign investment agreements at sea: investigating the concept of territory

in the international investment agreements of Iran, the Republic of Korea, and the European Union. *Journal of Korean law*, 2022, vol. 21, no. 1.

Список источников

1. Abadikhah M. Applying the foreign investment agreements at sea: investigating the concept of territory in the international investment agreements of Iran, the Republic of Korea, and the European Union // *Journal of Korean law*. – 2022. – Vol. 21, № 1.

Информация об авторе

Абадиха Мостафа – кандидат международного публичного права, преподаватель и исследователь международного инвестиционного права и морского права Университета Кум, Иран.

Information about the Author

Abadikhah Mostafa – Ph.D of public International law, lecturer and Researcher of the International investment law and law of the sea, Qom University, Iran.

Статья поступила в редакцию 30.04.2022; одобрена после рецензирования 25.05.2022; принята к публикации 26.05.2022.

The article was submitted 30.04.2022; approved after reviewing 25.05.2022; accepted for publication 26.05.2022.