

REPUBLIC OF KOREA

1. SUBSTANTIVE ASPECTS

1.1. Distinction

1.1.1. Does your national legislation differentiate between different categories of treaties? If it does, how are they categorised?

Yes. Certain types of treaties are enumerated in the *Constitution of the Republic of Korea*, Article 60 (1), which states that the National Assembly shall have the right to consent to the conclusion and ratification of those treaties.

Not all treaties that require the National Assembly's consent follow the same legislative process. A separate law governs the procedure for the conclusion and implementation of "commerce treaties".

The term "commerce treaty" is defined in the *Act on the Conclusion Procedure and Implementation of Commercial Treaties*, Article 2(Definitions) and generally refers to a treaty that regulates international trade, customs, market access, etc.

1.1.2. What are the criteria for their classification into specific category (subject matter, scope, financial effects, etc.)? Does the form of the instrument lead to a different category of treaty?

The *Constitution of the Republic of Korea*, Article 60(1) lists the following types of treaties as being subject to the National Assembly's consent:

- treaties pertaining to mutual assistance or mutual security
- treaties concerning important international organizations
- treaties of friendship, trade and navigation
- treaties pertaining to any restriction in sovereignty
- peace treaties
- treaties which will burden the State or people with an important financial obligation
- treaties related to legislative matters

The form(e.g., treaty, convention, protocol, exchange of notes) of the instrument does not lead to a different category of treaty.

1.1.3. What is the legal status of treaties not requiring parliamentary approval in the internal hierarchy of norms?

The *Constitution of the Republic of Korea*, Article 6 (1) stipulates that treaties duly concluded and promulgated in accordance with the *Constitution of the Republic of Korea*(and the generally recognized rules of international law) shall have the same legal status as the domestic laws of the Republic of Korea.

1.2. Competence

1.2.1. Which authority is responsible for drafting the text of each category of treaty?

There is no set authority for drafting treaties. Normally, line ministries draft treaty texts for subject matters within their competence, assisted by the Ministry of Foreign Affairs (MOFA).

1.2.2. In the process of drafting a treaty, which authority is responsible for the

assessment of the legal character and category of an agreement?

The authority(i.e. one of the line ministries) proposing a treaty is responsible for initial assessment. However, line ministries can not independently conclude a treaty.They must request MOFA to initiate the domestic procedure for the conclusion of a treaty and consult with MOFA on overall matters including the legal character and categorization of the proposed treaty.

For the majority of draft treaty texts, MOFA requests screening by the Ministry of Government Legislation. In this process, the Ministry of Government Legislation assesses whether the proposed treaty requires the National Assembly's consent under the *Constitution of the Republic of Korea*.

1.2.3. Which authority has the general responsibility for ratification/approval/confirmation procedures for treaties (is it generally the responsibility of the Parliament and only certain categories are confirmed by the government or vice versa)?

Under the *Government Organization Act*, Article 30 (Ministry of Foreign Affairs) MOFA has the overall responsibility for such procedures.

1.2.4. What are the responsibilities of the line ministries and the Ministry of Foreign Affairs throughout the procedure of conclusion and ratification of each category of treaty?

If a treaty is proposed by the line ministries, they may negotiate the treaty together with MOFA, or even lead the negotiation, assisted by MOFA. If the line ministry is not the ministry which proposed the conclusion of the treaty, upon request, that ministry will review draft and give opinions throughout the negotiation process.

In all cases, MOFA is involved in conclusion and ratification of a treaty, reviewing both administrative and substantive aspects of the process.

1.2.5. What is the competence of autonomous regions/territories for the conclusion of a treaty?

Under the *Local Autonomy Act*, Article 15 (Restriction on Conduct on State Affairs), paragraph 1, Local Governments are not competent to conclude treaties.

1.2.6. Does the Ministry of Foreign Affairs have delegated competence to conclude less significant treaties on its own, by producing full powers signed by the Minister of Foreign Affairs? If it does, what typically characterises these agreements?

Yes. If an agreement is intended to specify ways to implement an existing treaty, or to partially correct an already-concluded treaty without affecting the essence of the original treaty, MOFA may conclude such a treaty on its own.

2. PROCEDURAL ASPECTS

2.1. Procedure before conclusion/signature

2.1.1. What are the procedures required for the conclusion of different categories of treaties? Can a treaty be concluded through a simplified procedure? If yes, please provide a detailed presentation of the circumstances in which such procedures can be applied and describe the procedures.

For bilateral treaties not requiring parliamentary approval, upon the completion of the authentication of the text, the ministry proposing the treaty requests MOFA to initiate the domestic process for signing. MOFA, after its own review, requests the screening by the

Ministry of Government Legislation, a vice-ministerial meeting, deliberation by the State Council, and presidential approval. After this domestic process has been completed, the treaty can be signed.

Then, following the process stipulated in the treaty for its entry into force, such as the exchange of instruments of ratification or the exchange of diplomatic notes stating the completion of the domestic procedures for its entry into force, the treaty text is published in the government gazette, which is the final step of the procedure.

For multilateral treaties for which we participate from the drafting stage, the most significant difference is that presidential approval is obtained twice, once for signing and once again to express consent to be bound by the treaty.

2.1.2. Do you have a procedure to review the harmonization and compliance of treaties not requiring parliamentary approval with existing national laws? What authority does the review and when?

MOFA and the ministry that proposes the treaty primarily review the harmonization and compliance of treaties. In addition, the Ministry of Government Legislation thoroughly reviews such harmonization and compliance.

2.1.3. Do these procedures have one or two phases (before and/or after signature)? Can a treaty enter into force upon signature?

Generally the procedure has two phases: before and/or after signature. Even for bilateral treaties that do not need the National Assembly's consent, we generally exchange diplomatic notes with the counterpart to ensure that both sides have completed the necessary procedures for the entry into force of the treaty.

2.1.4. Are there any differences in the procedures when considering multilateral vs bilateral treaties?

Yes. Please refer to our answer to question 2.1.1.

2.1.5. Are there certain denominations of treaties, which, according to your domestic law, always imply a treaty in simplified form? (for example, "Memorandum of Understanding", "Minutes" etc.)

No. We usually use denomination "Memorandum of Understanding" for non-binding administrative arrangements.

2.1.6. Is the procedure for obtaining the mandate for negotiations differentiated according to different categories of treaties? If yes, how?

Yes. The *Act on the Appointment and Powers of Government Delegates and Special Envoys*, Article 11 (Special Cases concerning Appointment of Government Delegates for Negotiation to Conclude Commercial Treaties) sets out a different process for obtaining a mandate for negotiations for commerce (commercial) treaties. However, a commerce treaty as defined in the *Act on the Conclusion Procedure and Implementation of Commercial Treaties*, Article 2(Definitions), always needs the consent of the National Assembly for its conclusion, rendering it outside the scope of this questionnaire.

2.1.7. Are the signatories of all categories of treaties required to produce full powers upon signature or just some of them?

Full powers upon signature need to be produced when the signatory does not have the authority to sign the treaty, regardless of the category of treaty.

2.1.8. Do you allow for electronic signature of treaties? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of treaties instead of the exchange of physical copies? What is the procedure?

Although we do not have an explicit restriction on electronic signatures, it is our policy not to allow electronic signature nor transmission of treaties, one reason being that it does not guarantee the authenticity.

2.2. Procedure after conclusion

2.2.1. Does the internal procedure for expressing consent to be bound change based on different categories of treaties (i.e., ratification, approval, acceptance, etc.)? If so, please explain.

For bilateral treaties, after conclusion (signing) we follow the relevant provisions of the treaty to express consent to be bound, notifying our counterpart that Korea has completed all necessary procedures for the entry into force of the treaty.

For multilateral treaties for which we participate from the drafting stage, we proceed according to our domestic procedure (review by line ministries as to whether to express consent to be bound, prepare the Korean translation, review by the Ministry of Government Legislation, vice-ministerial meeting, cabinet meeting, and presidential approval) after signature.

With respect to commerce treaties, the *Act on the Conclusion Procedure and Implementation of Commercial Treaties*, Article 13 (Requests, etc. for Consent to Ratification) states that the Government shall provide certain information (e.g., impact assessment reports) to the National Assembly when requesting consent. Such requirement is not necessary for treaties other than commerce treaties.

2.2.2. Is entry into force of a treaty possible on the date of the signature? If yes, what are the procedural requirements that enable such entry into force?

Usually not. But in the rare cases where the provisions of the treaty so state, it could be possible. If Parties conclude a treaty by means of exchange of notes, the Parties may allow entry into force of the treaty (exchange of notes) on the signature by the reply note.

2.2.3. If entry into force is not possible on the date of the signature, is it possible to use provisional application for an earlier application of such treaty?

We do not have explicit provisions on the provisional application of treaties, but if a treaty does not require the National Assembly's consent, the executive branch of the government might consider provisional application if necessary.

2.3. Form

2.3.1. Do different categories of treaties require specific form when the text is prepared for signature (i.e., printing on treaty paper, sealing, treaty folder)?

Treaties Division of Ministry of Foreign Affairs of the Republic of Korea is responsible for preparing, formatting and printing of treaties consistent with our practices. On the other hand, for Free Trade Agreement (FTA), because of its large volume, Ministry of Trade, Industry and Energy prepares, formats and prints FTA in close cooperation with Treaties Division of MOFA.

2.3.2. Who prepares the text of different categories of treaties for signature?

There is no set authority for drafting different categories of treaties. Normally, MOFA is involved in preparing the text.

2.4. Implementation

How are treaties not requiring parliamentary approval implemented in national legislation in order to ensure respect of the principle of *pacta sunt servanda* in accordance with Article 26 of the VCLT?

Regardless of whether a treaty requires a consent of the National Assembly, we implement all treaties in good faith.

A treaty that does not require the National Assembly's consent is not related to legislative matters, or burdening the State or people with important financial matters. Therefore, there should be no conflict between such treaties and national law.

Please also refer to our answer to question 1.1.3.

2.5. Publication, Registration and Depository

2.5.1. Do all categories of treaties have to be published?

2.5.2. If not, which categories do not need to be published and made available to the general public? Is there room for discretion?

2.5.3. Which authority decides whether a treaty should not be published?

2.5.4. Where is each category of treaty published (Official Gazette, website, database, etc.)?

(2.5.1~2.5.4.) Although there are no explicit rules that treaties *must* be published and made available to the general public, all treaties are published and made available to the general public through the Official Gazette. (Additionally, treaties are uploaded onto and made available to the website of the Ministry of Government Legislation)

- *Constitution of the Republic of Korea*, Article 6 (1): Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.

- *Act on the Promulgation of Statutes*, Article 6 (Treaties): In cases of treaties, the fact that the treaties have obtained the consent of the National Assembly or have undergone the deliberation of the State Council shall be mentioned in the preambles of promulgation of those treaties, ...

- *Act on the Promulgation of Statutes*, Article 11 (Procedures for Promulgation and Public Announcement) (1): In cases where... treaties, ... are publicly announced, they shall be published in the Official Gazette.

2.5.5. Which categories of treaties are registered with the UN Secretariat?

Bilateral treaties and multilateral treaties for which the UN is the depositary are registered in accordance with Article 102 of the *United Nations Charter*.

For practical reasons, very large agreements, such as Free Trade Agreements, which amount to several hundreds of pages per agreement, short term project related agreements might be deferred from registration.

2.5.6. Where are the originals (or certified true copies) of different categories of treaties kept (e.g., MFA, authority responsible for their implementation, state archives)?

The Diplomatic Archives of MOFA or the National Archives keep the originals.