**National Courts as a Forum for the Resolution of Disputes under Article 26 Energy Charter Treaty**

**Questionnaire for National Reports**

The purpose of the following questionnaire is to assist you in reporting on your jurisdiction concerning the use of its courts as a forum for the resolution of disputes under Article 26 of the Energy Charter Treaty (“**ECT**”), as well as to help achieve uniformity of national reports.

1. Is your jurisdiction subject to civil code or common law?
2. Does your jurisdiction adopt a monist or dualist approach to the application of international law? In what circumstances will the courts apply international law to determine issues litigated before them?
3. Is it possible to rely directly on the provisions of the ECT in litigation before national courts (or tribunals)?

1. Is Understanding No. 16 to the ECT – which clarifies that the investment protection provisions of the ECT do not require transformation into national law to be applicable – binding on national courts (or tribunals) in your jurisdiction?
2. What rank does the ECT have in national court (or tribunal) proceedings in the hierarchy of norms?
3. Can subsequent national laws override international law (“treaty override”) in your jurisdiction?
4. To the extent that this can be ascertained in your jurisdiction, how common is litigation as a method of resolving Treaty-based investment disputes?
5. Do investors claiming under the ECT have standing before the courts (or tribunals) in your jurisdiction?
6. Which courts (or tribunals) in your jurisdiction have competence to hear ECT claims? Does the answer depend on which measure is being challenged (e.g. legislation or an administrative act)?
7. How are ECT claims to be initiated in your jurisdiction? Are there specific procedural rules? If not, is this a bar to bringing an ECT claim in your jurisdiction?
8. Where investors have aborted international arbitration proceedings under the ECT, can they initiate court proceedings in respect of the same claims in your jurisdiction?
9. Do national rules on time limits/bars for initiating proceedings apply to ECT claims? If so, what do they provide?
10. Do national statutory and/or judicial rules and procedures require to be amended to enable ECT claims to be brought (to the extent that they do not already address such claims)?
11. Are there requirements for pre-action conduct in an ECT claim? For example, do the courts in your jurisdiction require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?
12. What would be the sequence of procedural steps in an ECT claims before courts in your jurisdiction?
13. Could a defendant claim security for costs? If so, what form of security can be provided?
14. How would witness, documentary and expert evidence dealt with? Is cross-examination permitted?
15. How does a court decide if the claims or allegations are proven? What are the elements required to find in favour of a claim, and what is the burden of proof?
16. What remedies are available to investors in your jurisdictions for ECT claims?
    1. Is *restitutio in integrum* available?
    2. Is compensation for breach of international law available in your jurisdiction?
17. How do the courts deal with costs?
18. Can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?
19. How enforceable internationally are judgments from the courts in your jurisdiction?
20. Do ECT court judgements (or decisions of tribunals) in your jurisdiction enjoy special treatment as regards recognition and enforcement?
21. What role does EU law and its instruments play in the context of the above questions?