

# Korean state entity launches claim against India

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A power plant in India (Credit: iStock/TomasSereda)

UPDATED: A subsidiary of Korea's state-run power company has filed a US\$400 million investment treaty claim against India over alleged breaches of a gas supply agreement.

Indian daily *The Economic Times* today quoted an Indian government official as saying that Korea Western Power Co, better known as Kowepo, filed the claim on 29 November.

GAR understands the claim has been filed under the India-Korea bilateral investment treaty.

Shin & Kim and Shardul Amarchand Mangaldas are representing Kowepo while it is unclear if India has appointed external counsel.

The filing of the claim comes just over a year after it was [first threatened](#) by Kowepo, which is a subsidiary of Korea Electric Power Corporation, South Korea's largest energy company in which the government directly and indirectly holds a 51% share.

The dispute relates to Kowepo's 40% stake in Pioneer Gas Power Limited, a company that operates a 388-megawatt gas-based power plant in the Raigad district of Maharashtra, in Western India.

Kowepo invested just under US\$50 million in the plant in 2012. It says that it made the investment based on India's legal and policy framework at the time, also relying on statements made by the central and Maharashtra governments, which had painted the region as open to investment in its gas power sector.

In the company's notice of dispute issued last year, it said that the plant's commissioning was delayed due to a lack of gas allocation. This followed the decision of a panel of government ministers to remove gas-based plants from a priority list, favouring those using fertiliser instead.

*The Economic Times* reports that after the notice was issued the Indian government set up a parliamentary committee to seek a resolution of the matter. However, the official quoted in the report says the government "could not reach any consensus" on the project's revival.

GAR understands Kowepo is alleging breaches of the treaty concerning fair and equitable treatment, protection and security, expropriation, most-favoured nation treatment and national treatment. It also alleges India breached an umbrella clause in the BIT.

The claim has previously been reported as being worth US\$400 million, although it is understood the amount in dispute is yet to be quantified.

Counsel India has previously instructed in investment treaty disputes include Foley Hoag and Curtis Mallet-Prevost Colt & Mosle.

Last year, Foley Hoag helped the state to its [first win in a treaty case](#), defeating a US\$36 million claim by a French investor in a failed joint venture at a port in West Bengal. Curtis has represented the state in [two arbitrations with Vodafone](#) over a retroactive tax bill.

Meanwhile, local media reported last month that global financiers had warned India that its south-eastern state of Andhra Pradesh may face international arbitration claims after supposedly cancelling clean energy projects in July. Officials from the state's energy department have denied the projects were cancelled and insist that it acted lawfully.

### *Korea Western Power Co v India*

#### Counsel to Kowepo

- Shin & Kim

Partners **Doo-Sik Kim** and **Jae Min Jeon**, **Youngwon Yoon** and **Rockey Yoo** and associates **Arie Eernisse**, **Jae Hee Kim** and **Ji Ung Park** in Seoul

- Shardul Amarchand Mangaldas & Co

Partner **Rishab Gupta** and associate **Shreya Jain** in Mumbai

#### Counsel to India

Unknown