



United Nations
Commission on International Trade Law

Draft supplementary provisions on the conduct of proceedings to resolve international investment disputes

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MINISTÈRE DE LA JUSTICE



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Agenda item 5

Supplementary provisions on the conduct of proceedings to resolve international investment disputes

- Draft supplementary provisions on the conduct of proceedings to resolve international investment disputes: A/CN.9/1246

Agenda item 5

Finalization and adoption of the supplementary provisions on the conduct of proceedings to resolve international investment disputes

- Working Group III completed its review of the draft provisions in January 2026, which was followed by informal consultations online and during its session in March 2026.
- The Commission is invited to consider remaining issues (*in italics*) and means of implementing the supplementary provisions.

Provisions
addressing the
conduct of the IID
proceedings



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Provision V: Security for costs

- At the request of a disputing party
- The Tribunal shall decide on the request within **30 days after the last submission** on the request.
- Tribunal shall consider all relevant circumstances, including:
 - (a) That party's ability to comply with an adverse decision on costs;
 - (b) That party's willingness to comply with an adverse decision on costs;
 - (c) The effect that providing security for costs may have on that party's ability to pursue its claim;
 - (d) The conduct of the parties; and
 - (e) In relation to subparagraphs (a) to (d) or any other circumstance that the Tribunal finds relevant, the existence of third-party funding [, including whether the third-party funder agrees to cover any adverse decision on costs]. [For greater certainty, the Tribunal retains the discretion to order a funded party to provide security for costs even when the funding agreement includes a commitment by the third-party funder to cover an adverse decision on costs.]



Provision VIII: Period of time for making the award

1. The Tribunal shall make the award **as soon as possible**. In any event and unless otherwise agreed by the disputing parties, the Tribunal shall make an award **no later than**:

- (a) **60 days** after the last submission, if the award is made [in accordance with Provision IV, paragraph 5] [pursuant to an objection based on the claim being manifestly without legal merit];
- (b) **180 days** after the last submission, if [the] [an] award is made [in accordance with Provision II] [in a separate phase of the proceeding following bifurcation]; or
- (c) **240 days** after the last submission in all other cases.

2. A statement of costs and submission on the allocation of costs pursuant to Provision IX, paragraph 4 shall not be considered a submission for the purposes of paragraph 1.

3. When there are special circumstances justifying a delay, the Tribunal may, after advising the disputing parties of those circumstances [and after consulting with the disputing parties], extend the period of time in paragraph 1 and indicate a period of time within which it shall make the award.



Provision IX: Allocation of costs

1. The costs of the proceeding shall in principle be borne by the **unsuccessful disputing party**.
2. However, the Tribunal may allocate the costs between the disputing parties, if it determines the allocation to be reasonable taking into account all relevant circumstances of the case, including:
 - (a) The outcome of the proceeding or any parts thereof;
 - (b) The conduct of the disputing parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner in accordance with the applicable rules and complied with the orders and decisions of the Tribunal;
 - (c) The complexity of the issues;
 - (d) The reasonableness of the costs claimed by the disputing parties considering, among others, the work performed as well as the difference between the costs claimed by each party; and
 - (e) The amount of monetary damages claimed by a disputing party in proportion to the amount awarded by the Tribunal.



Provision IX: Allocation of costs

3. If the Tribunal makes an award **pursuant to Provision IV, paragraph 5**, the costs of the proceeding shall be borne by the unsuccessful party, unless there are exceptional circumstances justifying an allocation of costs between the disputing parties.
4. The Tribunal shall request that each disputing party file a statement of its costs and a written submission on the allocation of costs before allocating the costs between the disputing parties.
5. Costs incurred by a disputing party that:
 - (i) amount solely to a reward or bonus to its legal representatives based on the outcome of the proceeding and in excess of the remuneration of the work performed; or
 - (ii) relate to or arise from third-party funding, shall not be included in the costs of the proceeding.
6. The Tribunal may, at the request of a disputing party or on its own initiative, make a decision on costs at any time.
7. The Tribunal shall ensure that all decisions on costs are reasoned and form part of an award.



Provision XI: Third-party funding

1. **“Third-party funding” means** the direct or indirect provision of any funds to a disputing party by a non-party for the pursuit or defence of a proceeding, either through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding.
2. A disputing party **in receipt** of third-party funding **or that has entered into an arrangement** to receive third-party funding (the “funded party”) **shall disclose to the Tribunal and the other disputing parties** the following information:
 - (a) The name and address of the third-party funder (in case of a legal entity, the name of the person(s), who own or control that entity);
 - (b) The name and address of the [beneficial owner(s)] [effective beneficiary] of the third-party funder and any person(s) with decision-making authority for or on behalf of the third-party funder in relation to the proceeding;
 - (c) Whether the third-party funder agrees to pay any adverse decision on costs;



Provision XI: Third-party funding

- (d) Whether the third-party funder has any right to terminate the funding agreement;
 - (e) Whether the third-party funder has any right to make decisions regarding the management of the claim or the proceeding; and
 - (f) Whether the remuneration of the third-party funder is dependent on the outcome of the proceeding.
3. The funded party shall disclose the information listed in paragraph 2 to the other disputing parties, when the recourse to the proceeding is initiated or, if the funding arrangement is entered into afterwards, immediately thereafter. The funded party shall disclose the information listed in paragraph 2 to the Tribunal as soon as it is constituted or, if the funding arrangement is entered into afterwards, immediately thereafter.



Provision XI: Third-party funding

4. Upon the request of a disputing party or on its own initiative, the Tribunal may, **if it considers necessary, require** the funded party **to disclose**, to the Tribunal and the other disputing parties, information such as:

- (a) Further information regarding the funding agreement, including its terms;
- (b) Information regarding any other agreement between the legal representative of the funded party and the third-party funder, including its terms; and
- (c) The number of other proceedings funded by the third-party funder or its related entities against the respondent.

5. If there is any **new information or any change** in the information disclosed in accordance with paragraphs 2 and 3, the funded party shall disclose such information to the Tribunal and the other disputing parties **as promptly as possible**.

6. The Tribunal may[, after consulting with the disputing parties,] make public any information disclosed pursuant to paragraphs 2 to 5 in accordance with the applicable rules, and shall make  arrangements to prevent any confidential or protected information from being made available to the public.

Provision XI: Third-party funding

SANCTIONS

7. If the funded party fails to comply with the disclosure obligations in paragraphs 2 to 5, the Tribunal shall take any appropriate measure, such as:
- (a) Order security for costs in accordance with Provision V, paragraphs 6 to 9;
 - (b) Take the failure into account when allocating costs in accordance with Provision IX; and
 - (c) Suspend the proceeding with respect to that party's claim in accordance with Provision VI, paragraphs 2 to 4. If the proceeding is suspended for more than 90 days, the Tribunal may[, after consulting with the disputing parties,] order the termination of the proceeding.



Implementation of the Supplementary Provisions: General approach

Standalone set of provisions

- To be used by disputing parties and treaty parties as the need arises
- Prepared in a generic manner
- To be opted in in their entirety and not “a la carte”
- Possibility for parties to vary or deviate from the SPs to be further considered

Implementation of the Supplementary Provisions: Possible options

Protocol to the multilateral instrument on ISDS reform

- Incorporation of the SPs as treaty provisions into existing treaties, as an optional protocol to a framework convention (A/CN.9/WG.III/WP.246)
- Consent of treaty parties through opt-in and notification mechanism
- Incorporation of the other DPs in same or separate protocol ?

Implementation of the Supplementary Provisions: Possible options

Incorporation into the UNCITRAL Arbitration Rules

- The Transparency Rules approach (standalone text)
- The Expedited Arbitration Rules approach (Appendix to the UARs)
- Revisions of the UARs incorporating the Supplementary Provisions
- Interaction between the articles of the UARs and the SPs

Implementation of the Supplementary Provisions: Possible options

Application of the SPs to arbitrations not governed by the UARs

- SPs prepared for ad hoc setting yet may be compatible with institutional arbitrations
- Disputing parties could agree to the preferred arbitration rules as complemented or supplemented by the SPs
- If and to the extent permitted by and compatible with those arbitration rules
- Need to clarify the relationship between the applicable arbitration rules and the SPs



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Thank you for your attention!

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