

SUBMISSION BY THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION  
TO THE UNCITRAL WORKING GROUP NO. III ON ISDS REFORMS  
WITH RESPECT TO NOTE BY THE SECRETARIAT A/CN.9/WG.III/WP.168  
ON ADVISORY CENTRE

Paragraph 60 of document A/CN.9/WG.III/WP.168 notes the existence of the Investment Support Programme for Least Developed Countries (ISP/LDCs). This submission is intended to provide additional explanation and information about the Programme.

### ***Background***

ISP/LDCs was designed through cooperation between the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) and the International Development Law Organization (IDLO) with a generous grant from the Government of Italy. As an IDLO program, it provides legal and technical advice and assistance to requesting Least Developed Countries (LDCs)<sup>1</sup> on negotiations, dispute settlement, and other investment related matters, as well as training to develop their capacity in these areas. This assistance is provided at no cost to beneficiaries.

If the Sustainable Development Goals' vision of promoting peaceful, prosperous and inclusive societies is to become a reality, the needs of the LDCs must be prioritized. The instrumental role of foreign direct investment (FDI) for the realization of the SDGs for the LDCs is recognized in goal 10/target 10.b, which stresses the importance to encourage FDI to the LDCs in accordance with their national plans. The UN Programme of Action for the Least Developed Countries for the Decade 2011-2020 (IPoA) recognizes the importance of FDI and calls on development partners to "support capacity-building in least developed countries, and at the regional level, as appropriate, aimed at improving their abilities to attract foreign direct investment, including the ability to negotiate mutually beneficial investment agreements."<sup>3</sup> The IPoA also stresses the importance of private sector development to increase investment and calls for the provision of enhanced technical support to the private sector.<sup>4</sup> At the 2015 UN Conference on Financing for Development, world leaders specifically pledged to: "offer financial and technical support for project preparation and contract negotiation, advisory support in investment-related dispute resolution, ... as requested by the least developed countries".<sup>5</sup> ISP/LDCs contributes to the realization of these objectives by providing legal and expert assistance to requesting LDC governments and private firms with resource constraints to increase sustainable FDI and maximize the benefits they derive from it.

---

<sup>1</sup>[https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/lcd\\_list.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/lcd_list.pdf). Any of the LDCs that graduate from the LDCs category (and their eligible private sector entities) will remain eligible to apply for assistance under the Programme for a period of five years after the date of graduation.

<sup>3</sup> UN Programme of Action for the Least Developed Countries for the Decade 2011-2020, paragraph 122(3)(b).

<sup>4</sup> Id., paragraph 55.2(a) and (b).

<sup>5</sup> Addis Ababa Action Agenda of the Third International Conference on Financing for Development", paragraph 46.

### *The International Development Law Organization (IDLO)*

IDLO was founded as a training institute in 1983 and established as an intergovernmental organization in 1988.<sup>6</sup> Since then, it has emerged as the only intergovernmental organization exclusively devoted to the rule of law and sustainable development. Today, IDLO enjoys a geographically and thematically diverse program portfolio across over 30 countries and a vast alumni network of over 20,000 legal professionals. IDLO is headquartered in Rome, Italy and has offices in Geneva, New York and The Hague. It has United Nations Observer status since 2001. IDLO also has a field presence in many project countries, including several LDCs.

IDLO has a treaty-based mandate,<sup>7</sup> as well as technical and operational capability in the areas covered by the Programme and has assisted beneficiary countries to improve their business and regulatory environment, including in such fields as contracts, commercial dispute resolution, and legal capacity development. IDLO has a well-established track record in assisting and working in LDCs, gaining the trust of their governments and institutions and their confidence to guard their interests. As part of a program portfolio that covers countries in all regions at different stages of development, many LDCs have already benefited from IDLO's assistance and/or participated in its training programs.

At the same time, IDLO's intergovernmental status, mandate subscribed by both developed and developing countries, including several LDCs, and its standing vis-a-vis the international legal community, along with its accountability framework, command the confidence of both developed/donor countries and of legal firms and associations and uniquely position IDLO to deliver the services envisaged under the Programme.

### *ISP/LDCs*

The Programme seeks to address the capacity constraints that LDC governments and eligible state-owned or private sector entities with resource limitations may face in investment relationships with foreign counterparts through lawyers and experts, who agree to provide support on a pro bono or reduced-fee basis. The following are illustrative, non-exhaustive lists of the types of support that beneficiaries may request in the areas of investment-related negotiations and dispute settlement:

#### **Investment-related negotiations**

- Reviewing the feasibility of a proposed investment project between the beneficiary and a potential foreign investor, and conducting other related assessments and evaluations;
- Preparing contract negotiation positions;

---

<sup>6</sup> IDLO was established through an international treaty – the Agreement for the Establishment of the International Development Law Organization. Thirty-six States are Parties to IDLO's Establishment Agreement (Afghanistan, Australia, Austria, Bulgaria, Burkina Faso, China, Ecuador, Egypt, El Salvador, France, Honduras, Italy, Jordan, Kenya, Kuwait, Liberia, Mali, Mongolia, Montenegro, Mozambique, Netherlands, Norway, Pakistan, Paraguay, Peru, Philippines, Qatar, Romania, Senegal, Sudan, Sweden, Tunisia, Turkey, Uganda, USA and Vietnam). The OPEC Fund for International Development (OFID) is also a party bringing the overall membership of IDLO to 37.

<sup>7</sup> The Agreement for the Establishment of the International Development Law Organization, Article II (Purpose and Activities) is available at: <https://www.idlo.int/sites/default/files/pdfs/idlo-governancedocuments-english-oct2018.pdf>

- Preparing tender documents and managing tendering processes (where contracts are to be awarded through a competitive process);
- Preparing financial structures for the operation and management of a proposed project;
- Drafting and negotiating contractual provisions;
- Selecting the dispute settlement method, which may include arbitration of disputes before an institution or ad hoc, depending on the nature of the project, as well as the applicable law and place and seat of arbitration;
- Preparing a monitoring system to ensure contract compliance and avoidance of disputes;
- Preparing and conducting negotiations on Bilateral Investment Treaties or other investment-related agreements and strengthening the capacity of beneficiary officials active in this field.

### **Investment-related dispute settlement**

- Advising and/or representing the beneficiary in existing or potential arbitration, mediation or negotiation proceedings between the beneficiary and an investor, and in the enforcement (or challenge) of an award;
- Selecting arbitrators;
- Preparing submissions;
- Attending arbitration hearings; and
- Preparing and examining evidence.<sup>8</sup>

In all cases, experts will provide quality professional advice on issues under consideration, as well as information and analysis, to help the beneficiary assess options, decide upon its interests, priorities, and strategies, and weigh the trade-offs that may be involved when policy goals conflict. ISP/LDCs also aims to strengthen national capacity, through complementary on-demand training, and by drawing upon experts available in the country and region. Capacity building and tailor-made training will help the recipient countries to attract sustainable FDI.

All assistance under the Programme is demand-driven, provided upon request, and designed for quick response. Typically, legal and other experts will be made available to the beneficiary to provide technical assistance and help achieve the most beneficial outcomes. IDLO has secured the support of a large roster of law firms, professional associations, universities, research centers and non-governmental organizations who have agreed to collaborate with the Programme and provide services on a pro bono or reduced fee basis. All expenses are borne by the Programme, and provided at no cost to the beneficiary.

Further information on ISP/LDCs is available at:

<https://www.idlo.int/Investment-Support-Programme-LDCs>

and in French at:

<https://www.idlo.int/Investment-Support-Programme-LDCs-fr>

---

<sup>8</sup> It is worth noting that all services outlined in doc. A/CN.9/WG.III/WP.168, Section II.B are covered.