

**UNCITRAL Working Group III  
(Reform of Investor-State Dispute Settlement)  
Appellate mechanism**

*Informal online meeting  
2-3 March 2022, 1 to 3 pm (Vienna, Austria time),*

The UNCITRAL Secretariat is organizing a two-day informal meeting on the possible establishment of an appellate mechanism.

The purpose of the meeting is to consider informally the draft document prepared by the Secretariat on the appellate mechanism, available [here](#).

Topics for consideration include:

- Draft provisions on the functioning of an appellate mechanism; and
- The options for establishing an appellate mechanism

The purpose of informal meetings generally is to explore topics in detail in order to support delegations in their preparation for the next Working Group meetings at which these topics will be considered and make such discussions more efficient. In addition, informal meetings can be helpful in providing technical support to the Secretariat tasked with the preparation of revised versions of the working papers to be formally presented to the Working Group. No decisions will be taken at these meetings. The discussions will be guided by the Chair and the Rapporteur who will briefly introduce the topics. Interested delegations will be invited to make brief introductory remarks. Delegations will then be invited to informally raise any questions, share their views and make suggestions

The meeting will not be recorded. The Chair and the Rapporteur will prepare a brief summary in English and French that will be posted on the website, the purpose being to provide information to those delegations which were not able to attend, and to highlight the proposals made. Comments will not be attributed to States or specific delegates.

The meeting is open for participation to all UNCITRAL Working Group III delegations.

The meeting will be held online. Please, connect on 2-3 March 2022, at 1-3 pm (Vienna, Austria time) at:

<https://us02web.zoom.us/j/88606386613?pwd=Wk84WHh5aIRiZEFLaIn cFZlZ2ZNdz09>. No meeting ID or password is required.

## **Programme**

### **Day 1:**

#### ***Opening of the meeting***

*Welcome remarks as well as introductions into the topics by Anna Joubin-Bret, Secretary, UNCITRAL; Natalie Morris-Sharma, Rapporteur, Working Group III; and Shane Spelliscy, Chair, Working Group III.*

#### ***Consideration of the main provisions on the functioning of an appellate mechanism***

The Working Group considered the main elements of an appellate mechanism at its resumed thirty-eighth session, in January 2020 ([A/CN.9/1004/Add.1](#), paras. 16-61), and at its fortieth session, in February 2021 ([A/CN.9/1050](#), paras. 57-115). The goal was to clarify, define and elaborate such reform element, without prejudice to any delegations' final position.

During the informal meeting, participants will be invited to consider the draft provisions that would be constitutive of an instrument establishing an appellate mechanism. Such draft provisions have been prepared based on the deliberations of the Working Group.

*Participants will be invited to consider:*

- Scope of appeal (Draft provision 1)
- Grounds for appeal and standard of review (Draft provision 2)
- Timeline (Draft provision 3)
- Suspensive effect of appeal (Draft provision 4)
- Decisions by the appellate tribunal (Draft provision 5)
- Duration of the appellate proceedings (Draft provision 6)
- Post-decision remedy (Draft provision 7)

## **Day 2:**

*Participants will continue the review of draft provisions on the agenda of Day 1 and once completed, will be invited to consider:*

- How to ensure a manageable caseload and to avoid systematic appeals by disputing parties (see paras. 53-63, and draft provisions 8-10)
- What additional provisions should be developed (paras. 64 and 65)
- A draft provision for a multilateral instrument (para. 66), which aims at providing flexibility with regard to the type of decisions that could be subject to appeal

*Time permitting, delegations will be invited to brainstorm regarding the options for establishing an appellate mechanism (see paras. 67-75)*

## Background documents

The following documents contain information on the history and current status of the discussion on the establishment of an appellate mechanism in Working Group III and provide for a basis for the discussions. Further material can be found on the UNCITRAL website, [here](#).

- Initial draft on Appellate mechanism
- A/CN.9/WG.III/WP.185 – Note by the Secretariat on the Appellate and multilateral court mechanism
- A/CN.9/WG.III/WP.150 - Note by the Secretariat on the Consistency and related matters
- A/CN.9/1004/Add.1 - Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its resumed thirty-eighth session
- A/CN.9/964 - Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session
- A/CN.9/935 - Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fifth session
- A/CN.9/930/Add.1/Rev.1 - Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session - Part II

Information is also available on the website of the Academic Forum on ISDS, at:

<https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/>