

Annex III

Statute of the Advisory Centre on International Investment Dispute Resolution (adopted in principle)

Article 1

Establishment

The Advisory Centre on International Investment Dispute Resolution (hereinafter, the “Advisory Centre”) is hereby established.

Article 2

Objectives

1. The Advisory Centre aims to provide training, support and assistance with regard to international investment dispute resolution.
2. The Advisory Centre aims to enhance the capacity of States and regional economic integration organizations to prevent and handle international investment disputes, in particular least developed countries and developing countries.

Article 3

General principles

1. The Advisory Centre shall operate in a manner that is effective, affordable, accessible and financially sustainable.
2. The Advisory Centre shall be independent and free from undue external influence, including from its donors.
3. The Advisory Centre shall, as appropriate, cooperate with international and regional organizations and coordinate its activities to ensure the efficient use of its resources.

Article 4

Membership

1. A State or a regional economic integration organization may become a Member of the Advisory Centre in accordance with article 12.
2. Each Member is entitled to the services of the Advisory Centre and has obligations, as set out in this Protocol and the regulations adopted by the Governing Committee.
3. For the purposes of this Protocol, each Member shall be categorized into [annex I, annex II or annex III]. This categorization is without prejudice to classifications in other instruments or other organizations.
4. For the purposes of this Protocol, a “non-Member” refers to a State or a regional economic integration organization that is not a Party to this Protocol.

Article 5

Structure

1. The Advisory Centre shall consist of a Governing Committee, an Executive Committee and a Secretariat headed by an Executive Director.

Governing Committee

2. The Governing Committee shall be composed of representatives of the Members of the Advisory Centre. Each Member shall appoint one representative to the Governing Committee.

3. The Governing Committee shall:
 - (a) Adopt and publish its rules of procedure and those of the Executive Committee;
 - (b) Adopt and publish regulations on the operation of the Advisory Centre;
 - (c) Appoint the members of the Executive Committee taking into consideration geographical diversity and gender balance;
 - (d) Assign any other functions to the Executive Committee;
 - (e) Adopt and publish the staff regulations on the conditions of services and rights and obligations of the Executive Director and staff members of the Secretariat;
 - (f) Appoint the Executive Director for a term of four (4) years; the Executive Director shall be eligible for reappointment;
 - (g) Evaluate and monitor the performance of the Advisory Centre and adopt and publish the annual report prepared by the Executive Director;
 - (h) Adopt and publish the annual budget of the Advisory Centre prepared by the Executive Director and reviewed by the Executive Committee;
 - (i) Periodically assess and, if needed, adjust the scope and type of services of the Advisory Centre, including by deciding to phase in some of the services at a later stage of its operation; and
 - (j) Perform other functions in accordance with this Protocol.
4. The Governing Committee shall meet at least once a year.

Executive Committee

5. The Executive Committee shall consist of [six] members. The Executive Director shall also serve ex officio on the Executive Committee. Each group of Members listed in [annexes I, II and III] shall nominate [two] members of the Executive Committee for appointment by the Governing Committee. The members of the Executive Committee shall serve in their personal capacity and shall be selected on the basis of their professional qualifications, including in particular in international investment dispute resolution.
6. The Executive Committee shall be accountable to the Governing Committee. The Executive Committee shall meet as often as necessary and shall:
 - (a) Propose for adoption by the Governing Committee rules on the procedure of the Executive Committee;
 - (b) Take decisions necessary to ensure the efficient and effective operation of the Advisory Centre in accordance with this Protocol and the regulations adopted by the Governing Committee;
 - (c) Review the annual budget of the Advisory Centre prepared by the Executive Director and submit it for adoption by the Governing Committee;
 - (d) Provide advice to the Executive Director, including on the administration of the budget of the Advisory Centre;
 - (e) Appoint the external auditor;
 - (f) Supervise the administration of the Secretariat; and
 - (g) Perform other functions in accordance with this Protocol and as assigned by the Governing Committee.

Decision-making

7. The Governing Committee and the Executive Committee shall endeavour to make all decisions by consensus.
8. If a decision cannot be made by consensus in the Governing Committee, the subject matter may be submitted to a vote, which requires the presence of a majority of the Members. Each Member shall have one vote. Decisions shall require a four-fifths majority of the Members present and voting. If the majority of the Members are not present, the same subject matter may be submitted for a second vote at the next meeting of the Governing Committee, the decision of which may be made by a four-fifths majority of the Members present and voting.
9. If a decision cannot be made by consensus in the Executive Committee, the subject matter may be submitted to a vote, which requires the presence of a majority of the members of the Executive Committee. Each member shall have one vote and the Executive Director, serving *ex officio*, shall not have a vote. Decisions shall require a four-fifths majority of the members present and voting. If the majority of the members are not present, the same subject matter may be submitted for a second vote at the next meeting of the Executive Committee, the decision of which may be made by a four-fifths majority of the members present and voting.

Executive Director and the Secretariat

10. The Executive Director shall:
 - (a) Manage the day-to-day operation of the Advisory Centre;
 - (b) Employ and manage the staff members of the Secretariat in accordance with the staff regulations adopted by the Governing Committee;
 - (c) Prepare the annual report on the operation of the Advisory Centre for adoption by the Governing Committee;
 - (d) Prepare the annual budget of the Advisory Centre for review by the Executive Committee; and
 - (e) Represent the Advisory Centre externally.
11. The Executive Director shall be accountable to the Governing Committee.
12. The Executive Director shall not hold any other employment or engage in any other occupation without the approval of the Executive Committee.

Article 6

Technical assistance and capacity-building

1. The Advisory Centre shall provide technical assistance to its Members and engage in capacity-building activities with regard to international investment dispute resolution, including by:
 - (a) Advising on issues pertaining to dispute prevention;
 - (b) Providing tailored training with regard to possible means of preventing and resolving disputes;
 - (c) Holding seminars and conferences;
 - (d) Functioning as a forum for the exchange of information and sharing of best practices;
 - (e) Functioning as a repository of information and related resources; and
 - (f) Performing any other functions as assigned by the Governing Committee.
2. The Advisory Centre may engage other persons or entities in providing the services in paragraph 1.

3. In accordance with the regulations adopted by the Governing Committee, the Executive Director may allow:

(a) Non-Members to participate in the activities organized by the Advisory Centre pursuant to paragraph 1; and

(b) Other persons or entities to participate in the activities pursuant to paragraph 1, subparagraphs (c) to (e). When the Governing Committee assigns any other functions in accordance with paragraph 1, subparagraph (f), it shall also determine the extent to which the Executive Director may allow other persons or entities to participate in those activities.

4. The regulations adopted by the Governing Committee shall require the Executive Director to set appropriate fees for the participation of non-Members, other persons or entities, and include criteria for allowing participation, such as whether it contributes to the objectives of the Advisory Centre, whether it creates any conflict of interest and the resource implications for the Advisory Centre.

Article 7

Legal advice and support with regard to international investment dispute proceedings

1. Upon request by a Member, the Advisory Centre shall provide legal support and advice with regard to an international investment dispute proceeding prior to and after its initiation, including by:

(a) Providing a preliminary assessment of the case, including the appropriate means to resolve the dispute;

(b) Assisting in the selection of mediators, arbitrators or other types of adjudicators (including any challenge), as well as experts, taking into account geographical diversity and gender balance;

(c) Supporting the preparation of statements, pleadings and evidence, as well as other aspects of the proceeding;

(d) Representing the Member in the proceeding, including in a hearing, at the instruction of and in conjunction with that Member;

(e) Facilitating the appointment of external legal representatives; and

(f) Performing any other functions as assigned by the Governing Committee.

2. The provision of services in paragraph 1 is subject to the resources available to the Advisory Centre.

3. In providing the services in paragraph 1, the Advisory Centre shall, in principle, give priority to Members listed in [annex I], followed by Members listed in [annex II], in accordance with the regulations adopted by the Governing Committee. In the event that requests are received from Members listed in the same annex, priority shall generally be given to the Member that requested the services first.

4. The Executive Director may allow a non-Member to request the services in paragraph 1 in accordance with the regulations adopted by the Governing Committee. Whether the requesting non-Member may benefit from the services and the extent of the services to be provided by the Advisory Centre shall be determined by the Governing Committee. In making the determination, the Governing Committee shall consider whether allowing a non-Member to benefit from the services contributes to the objectives of the Advisory Centre, whether the non-Member is in the process of becoming a Member, whether it creates any conflict of interest and the resource implications for the Advisory Centre.

Article 8

Financing

1. The operation of the Advisory Centre shall be funded by the contributions of Members, the fees for services provided by the Advisory Centre and voluntary contributions.
2. Each Member shall make financial contributions in accordance with [annex IV]. If a Member is in default of its contributions, the Governing Committee may decide to limit or modify its rights or obligations in accordance with the criteria established in the regulations adopted by the Governing Committee.
3. The Advisory Centre shall charge fees for its services in accordance with the regulations adopted by the Governing Committee:
 - (a) Services in article 6, paragraph 1, shall be provided at no cost to Members. The fees to be charged to non-Members, other persons and entities shall be determined by the Executive Director in accordance with the regulations adopted by the Governing Committee;
 - (b) The fees to be charged by the Advisory Centre for services in article 7, paragraph 1, shall not exceed the amount necessary to recover its costs. The fees to be charged to Members listed in [annex I] shall be lower than those charged to Members listed in [annex II], which shall be lower than those charged to Members listed in [annex III]. The fees to be charged to non-Members shall be equal to or higher than those charged to Members listed in [annex III], unless determined otherwise by the Governing Committee.
4. The Advisory Centre may receive voluntary contributions, whether monetary or in kind, from Members, non-Members, international and regional organizations and other persons or entities in accordance with the regulations adopted by the Governing Committee, provided that the receipt of such contributions is consistent with the objectives of the Advisory Centre, is reported in the annual report and does not create any conflict of interest or otherwise impede the independent operation of the Advisory Centre.
5. The Advisory Centre may set up trust funds for the purposes of receiving and managing the financial contributions and the fees referred to in paragraphs 1 to 4.
6. The budget and expenditure of the Advisory Centre shall be subject to internal and external audit.

Article 9

Legal status and liability

1. The Advisory Centre shall have full international legal personality. The legal capacity of the Advisory Centre shall include the capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings.
2. The Advisory Centre shall be headquartered in [*to be determined*]. The Advisory Centre shall conclude a host country agreement with [*host State/Government to be determined*]. The Governing Committee may decide to relocate the headquarters, either temporarily or permanently, in the event that exceptional circumstances so significantly impact the operational effectiveness of the headquarters that the existing location is no longer suitable.
3. The Governing Committee may decide to establish regional offices of the Advisory Centre.
4. To fulfil its objectives, the Advisory Centre shall enjoy in the territories of each Member the privileges and immunities as set out in this Protocol.
5. The archives of the Advisory Centre shall be inviolable, wherever they may be.

6. The Advisory Centre, its property and assets shall enjoy, at a minimum, such immunity as necessary for the fulfilment of its objectives and for the exercise of its functions, except when the Advisory Centre waives this immunity.

7. The Advisory Centre, its property, assets and income, and its operations and transactions authorized by this Protocol shall be exempt from direct taxation and all customs duties. The Advisory Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.

8. The Executive Director and staff members of the Secretariat shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Advisory Centre waives this immunity.

9. No tax shall be levied on or in respect of salaries, expense allowances or other emoluments paid by the Advisory Centre to the Executive Director and the staff members of the Secretariat.

Article 10 Reservations

No reservations are permitted under this Protocol.

Article 11 Depositary

The [*to be determined*] is hereby designated as the depositary of the Protocol.

Article 12 Signature, ratification, acceptance, approval, accession

1. This Protocol is open for signature by a State or a regional economic integration organization [*place and time to be determined*].
2. This Protocol is subject to ratification, acceptance or approval by the signatories.
3. This Protocol is open for accession by a State or a regional economic integration organization that is not a signatory from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 13 Entry into force

1. This Protocol shall enter into force six months following the date upon which the following conditions are met:

(a) [*Number to be determined, including the possibility of requiring a certain number from each group of Members*] instruments of ratification, acceptance, approval or accession have been deposited; and

(b) The total amount of contributions that States or regional economic integration organizations that are Parties to the Protocol are obliged to make in accordance with [annex IV] exceeds [*an amount to be determined*].

2. When a State or a regional economic integration organization ratifies, accepts, approves or accedes to this Protocol after its entry into force in accordance with paragraph 1, this Protocol enters into force in respect of that State or regional economic integration organization thirty (30) days after the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 14 Annexes

The Annexes to this Protocol constitute an integral part of this Protocol.

Article 15

Amendments to the Protocol and annexes

Amendments to an article of the Protocol

1. Any Member may submit a proposal to amend an article of this Protocol to the Governing Committee. The proposal shall be promptly communicated to all Members. The Governing Committee may adopt the amendment in accordance with article 5, paragraphs 7 and 8.
2. The Executive Director shall communicate the amendment adopted pursuant to paragraph 1 to the depositary. The depositary shall submit the adopted amendment to all Members for ratification, acceptance or approval. The adopted amendment shall enter into force thirty (30) days after the date of deposit of the instrument of ratification, acceptance or approval by all Members.

Amendments to the Annexes

3. Any Member, the Executive Committee or the Executive Director may submit a proposal to amend [annexes I, II, III or IV] to the Governing Committee. The proposal shall be promptly communicated to all Members.
4. The Governing Committee shall adopt amendments to [annexes I, II and III] in accordance with article 5, paragraphs 7 and 8, only:
 - (a) To reflect in [annexes I and II] any changes to the list of least developed countries adopted by the United Nations General Assembly;
 - (b) To include in [annex II or III] a State listed in [annex I] that requests to be thus included;
 - (c) To include in [annex III] a State listed in [annex II] that requests to be thus included; or
 - (d) [To refer to the possible use of objective criteria to be developed for classifying Members into [annexes II and III] in making adjustments thereto].
5. The Governing Committee shall endeavour to adopt amendments to [annex IV] by consensus. If a decision cannot be made by consensus, the amendment shall be submitted for a vote to each group of Members listed in [annexes I, II and III]. The amendment shall be adopted when each group of Members adopts the amendment in accordance with article 5, paragraphs 7 and 8.
6. The Executive Director shall communicate the amendment adopted pursuant to paragraphs 4 and 5 to the depositary. The adopted amendment shall enter into force thirty (30) days after the notification is received by the depositary.

Party to the Protocol as amended

7. A State or a regional economic integration organization that becomes a Party to this Protocol after the entry into force of an amendment shall be considered a Party to the Protocol as amended.

Article 16

Withdrawal and termination

1. Any Member may at any time withdraw from this Protocol by means of a formal notification addressed to the depositary. The depositary shall inform the Executive Director, who shall promptly communicate the withdrawal to all Members. The withdrawal shall take effect thirty (30) days after the notification is received by the depositary. The obligations to make any remaining contribution at the time of withdrawal and to pay fees for the services provided by the Advisory Centre shall not

be affected by the withdrawal. The withdrawing Member shall not be entitled to any reimbursement of its contributions.

2. If a Member submits the notification of withdrawal within three (3) months of the date of receipt by the depositary of the notification of an amendment to any of the annexes, the amendment shall not apply to that Member.

3. The Governing Committee may terminate this Protocol. Upon termination, the assets of the Advisory Centre shall be distributed among the Members at that time in proportion to the total of each Member's contributions, including its voluntary contributions, to the financing of the Advisory Centre's operation.

Annexes

Annex I

[This Annex would reflect the list of least developed countries adopted by the United Nations General Assembly when the statute is finalized.]

Annexes [II and III]

[Annexes [II and III] would list the States Members of the United Nations not listed in annex I. Those States would be categorized in accordance with the objective criteria to be developed for that purpose. The lists would also include regional economic integration organizations.]

Annex [IV] – Scale of minimum contributions

	Annual contribution	Multi-year contribution	One-time contribution
Members listed in [annex I]			
Members listed in [annex II]			
Members listed in [annex III]			