

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

Possible establishment of an advisory centre

***Informal online meeting from 14 to 16 June 2021, 1 to 3 pm (Central
European Summer Time – CEST)***

The UNCITRAL Secretariat is organizing three two-hour informal meetings over a period of three days on the possible establishment of an advisory centre on international investment law.

The purpose of the meetings is to consider informally the draft documents prepared by the Secretariat on the advisory centre, available [here](#). The purpose is also to explore topics in detail in order to support delegations in their preparation for the next Working Group meeting at which this topic 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.

Topics for consideration include:

- The purpose and scope of activities of an advisory centre;
- Its services and potential beneficiaries; and
- Its structure and financing.

The discussions will be guided by the Chair and Rapporteur who will briefly introduce the topics, and delegations will be invited to informally raise any questions, share their views and make suggestions.

The meetings 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 meetings are open for participation to all UNCITRAL Working Group III delegations. They will be held in English and French, with the interpretation being sponsored by the German Federal Ministry for Economic Cooperation and Development (BMZ)).

The meeting will be held online, the link will be circulated in due time.

Programme

Day 1:

Opening of the meeting

Welcome remarks by Anna Joubin-Bret, Secretary, UNCITRAL as well as introduction into the topic “Purpose and scope of services” by Natalie Morris-Sharma, Rapporteur, Working Group III; and Shane Spelliscy, Chair Working Group III.

Purpose and scope of services

The suggested focus of the activities of an advisory centre relates to international investment law and ISDS. The overarching principles governing the centre are that it should remain independent, impartial, non-political as well as reliable and sustainable. Regarding the overall organization of the centre, two pillars are identified: the services could be rendered through an assistance mechanism, and the centre could also serve as a forum, which activities could be further delineated.

Delegations will be invited to consider:

- The list of possible services that an advisory centre could render; these include: (i) pre-dispute and dispute avoidance services; (ii) mediation and other alternative dispute resolution (ADR) services; (iii) assistance in organizing the defence and support during dispute settlement proceedings; (iv) legal and policy advisory services; and (v) capacity-building and a platform for sharing of best practices.
- The connection between the scope of the services and available funding – the more money is available on a sustainable basis, the more services can be provided.
- The possible prioritization of services: as available funding depends not only on the structure, but also the income and the willingness of donors to fund at least initially the centre, it might be necessary to prioritize the services to be provided.

The discussion will be conducted on the basis of the following draft provisions:

- Draft provision 1 on scope (see paras 7-9) which is the general norm on the purpose and its scope of activities;
- Draft provisions 2(a)-2(e) outlining in more detail the different potential services: (i) pre-dispute and dispute avoidance services, (see paras. 11-

14) (ii) mediation and other alternative dispute resolution (ADR) services (see paras. 15-20); (iii) assistance in organizing the defence and support during dispute settlement proceedings with different levels of assistance, (see paras. 21-33) ; (iv) legal and policy advisory services (see paras. 34-36); and (v) capacity-building and a platform for sharing of best practices (see paras. 27-41). For an overview, please consult the table in Annex 1 of the draft note by the Secretariat.

Day 2:

Potential beneficiaries

Introduction into the topic “Potential beneficiaries” by Natalie Morris-Sharma, Rapporteur, Working Group III; and Shane Spelliscy, Chair Working Group III.

Delegations will be invited to consider:

- The list of possible beneficiaries; these include: (i) all respondent States; or (ii) all or some developing countries and LDCs or only LDCs; as well as on an ad hoc basis (iii) States with little experience in the field and States that face difficulties (for instance, situations where States have very limited financial capacities, or are in situation of political turmoil);
- Whether the list could be extended to SMEs fulfilling certain requirements (such as having a legitimate claim with certain chances of success and being unable to financially afford the legal claim, having regard to size, origin and other relevant items).
- Whether, depending on the scope of services, beneficiaries could also include claimant or respondent States in State-to-State proceedings; non-disputing State parties seeking to provide input into disputes filed under treaties they are part of; amicus curiae; and/or other potential intervenors; and
- The link between the potential beneficiaries and the services that could be provided as well as the link between the beneficiaries and the funding of the centre.

The discussions will be conducted on the basis of:

- Draft provision 4, outlining the beneficiaries and foreseeing an order of priority of these beneficiaries (see paras. 48-59); and
- Annex 2 of the draft note by the Secretariat on the beneficiaries.

Day 3:

Structure and financing

Introduction into the topic “Structure and financing” by Natalie Morris-Sharma, Rapporteur, Working Group III; and Shane Spelliscy, Chair Working Group III.

The funding of the Advisory Centre is obviously closely interlinked with the services that will be provided and the beneficiaries that have access to such services. Webinars in English, French and Spanish have been conducted on this topic, and which have been recorded and can be accessed here (https://uncitral.un.org/working_groups/3/investor-state, under webinars).

Delegations will be invited to consider the following various options for funding:

- The advisory centre being financed by its members, by a fund established by participating developed States or voluntary contributions from other sources;
- The possibility of the advisory centre charging a fee for its services or a fee to the users of ISDS; or
- A combination of the above.

The discussions will be conducted on the basis of:

- The draft provision on the financial structure of the centre (see paras. 12-31);
- The budget tentatively prepared showing what associated costs might be required and assessing tentatively the workload that the offering of the different services might require (see Annexes of Addendum 1 to the draft note).

Concluding remarks

Remarks by Anna Joubin-Bret, Secretary, UNCITRAL; Natalie Morris-Sharma, Rapporteur, Working Group III; and Shane Spelliscy, Chair Working Group III

Background documents

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

- Draft Working Paper on the establishment of an advisory centre (open for comments by delegation until 15 July)
- Draft Working Paper on the establishment of an advisory centre – Add. 1, (open for comments by delegation until 15 July)
- [A/CN.9/WG.III/WP.168](#), Note by the Secretariat on the establishment of an advisory centre
- [A/CN.9/1004](#), Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-eighth session (Vienna, 14–18 October 2019)
- Academic Forum on ISDS [Concept Paper 2019/14](#) An Advisory Centre on International Investment Law: Key Features, Karl P. Sauvant
- [Scoping Study](#) prepared by the Columbia Centre for Sustainable Investment (CCSI) on behalf of the Government of the Netherlands