

Corrigendum to the draft provisions on procedural and cross-cutting issues (A/CN.9/WG.III/WP.244 and A/CN.9/WG.III/WP.245)

▪ Draft Provision 9: Allocation of costs

- In paragraph 2(f), delete the word “compensation”
- In paragraph 4, replace the words “a request” with “an objection”

2. ...

(f) The amount of monetary damages claimed by the claimant in proportion to the amount awarded by the Tribunal.

3. ...

4. Paragraphs 1 to 3 apply to any costs arising from an objection by a disputing party that a claim is manifestly without legal merit pursuant to Draft Provision 4.

▪ Draft Provision 12: Third-party funding

- In paragraph 3(b), replace the words “adverse cost award” with “adverse decision on costs”

3. In addition, the Tribunal may require the funded party to disclose:

(a) ..

(b) Whether the third-party funder agrees to cover any adverse decision on costs;

(c) ...

▪ Draft Provision 18: Shareholder claims

- In the chapeau of paragraph 2, replace the word “to” with “against”
- In paragraph 4, replace the phrase “pursuant to paragraph 3” with “pursuant to paragraph 2”

...

2. A shareholder may submit a claim against a Contracting Party on behalf of an enterprise of that Contracting Party, which the shareholder owns or controls, only in the following circumstances: ...

...

4. When the Tribunal makes an award in favour of the shareholder in a proceeding pursuant to paragraph 2, the Tribunal shall award monetary damages and...

▪ Footnote 27 of A/CN.9/WG.III/WP.245

- Refer to article 17.31 instead of 10.30 and reflect the actual text

²⁷ The Working Group may wish to consider whether the conditions in paragraph 1 should be cumulative. See Article 17.31 (1) of the EU-Chile Advanced Framework Agreement (2023) which follows a more restrictive approach of counterclaims which reads as follows: “The respondent may submit a counterclaim on the basis of a claimant's failure to comply with an international obligation applicable in the territories of both Parties, arising in connection with the factual basis of the claim.”