

# A Multilateral Instrument — The Internal Structure and the Connection of Different Elements

**Manjiao Chi (Cliff)**

**University of International Business and Economics (UIBE)  
23 April 2020**

# What are on the table?

---

Making a multilateral instrument (“MI”) is considered as an important way to proceed the ISDS reform, which should be able to provide flexibility to accommodate different ISDS needs of countries. Various proposals have been put forward:

- A MIC: permanent court for first instance adjudication and an appeal
- Arbitration (improved) and permanent appeal
- The “suite” approach: different reform options can be pursued independently from one another
- The “blocks” approach: setting out the minimum standards, allow countries to opt-in other options

# Why the connectivity issue?

---

All models necessitates a combination of two or more ISDS reform options, which would prompt a connectivity issue, particularly the “Blocks” and “Suite” proposals.

Consideration of connectivity relies on the compatibility and conflict of different options. Options could be supplementary to or conflicting with each other. The connection of these options not only impacts the function of the options combined, but also influences the structure of the MI (existence/absence of appeal, reform priority would be different).

# What factors to be considered?

---

Various existing and potentially novel ISDS reform options could be considered for the MI. The majority of proposals include various existing ISDS options, touching upon many aspects of the existing ISDS regime.

**Compatibility:** countries may have different priorities. If all existing tools should be part of the MI, it is necessary that they would not work against each other (e.g. country favor of arbitration may focus more on reforming the procedural issues, not appeal).

**Connectivity:** different options could be used, selecting one option may impact the other, thus in addition to improving of the options, the connectivity between them should be considered.

# Can the models facilitate system integration?

Countries seem to have a strong interest in either the Mauritius Convention model (“UNCITRAL Model”) or/and the BEPS (“OECD Model”).

Both models rely on a certain level of consensus on the basics/minimum standards for each option. Thus they should work for “option selection” (how well an option could be made?)

But if MI aims at a higher level of “system integration”, then more consideration should be given to the connectivity (how well multiple options could work when combined).