

United Nations Commission on International Trade Law



United Nations
UNCITRAL

Guidance on signature, ratification, acceptance, approval and accession

United Nations Convention on Transparency in Treaty-based Investor-State Arbitration

“Mauritius Convention on Transparency”



The United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, also known as the “Mauritius Convention on Transparency” (the “Convention”) applies to arbitration between an investor and a State or a regional economic integration organization conducted on the basis of an investment treaty concluded before 1 April 2014. It provides an efficient mechanism for States or regional economic integration organizations that wish to apply the UNCITRAL Rules on Transparency (“the Rules on Transparency”)¹ to arbitrations arising under such investment treaties.

Together with the Rules on Transparency, the Convention contributes to the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes.

This brochure provides information on the Convention and the Rules on Transparency. Further, it describes the procedures that States or regional economic integration organizations that are parties to an investment treaty must follow in order to sign, ratify, accept, approve or accede to this Convention. Included in the annexes are model instruments of (i) ratification, acceptance or approval, (ii) accession, (iii) reservation, and (iv) withdrawal of a reservation, which can be used for deposit with the Secretary-General of the United Nations.

General information on the Convention and the Transparency Rules

The Convention was adopted by the General Assembly on 10 December 2014 with the aim of providing States and economic integration organizations that wished to make the Rules on Transparency applicable to their investment treaties concluded before 1 April 2014 (“existing investment treaties”) an efficient mechanism to do so. In a nutshell, the Convention supplements existing investment treaties with respect to transparency-related obligations. By becoming a Party to the Convention, the Party is expressing its consent to apply the Rules on Transparency to investor-State arbitration initiated pursuant to an existing investment treaty.

- The Rules on Transparency

The Rules on Transparency, adopted by UNCITRAL in 2013, comprising 8 articles, constitute an innovative set of procedural rules that make arbitrations involving a State, initiated under an investment treaty, accessible to the public. They accomplish the following objectives: (i) creating public knowledge of the initiation of an investor-state arbitration; (ii) making documents including the decisions and awards of arbitral tribunals public; (iii) allowing third parties to make submissions to arbitral tribunals where such submissions would be helpful and relevant and would not unduly delay, interfere with, or increase the costs of, the proceedings; allowing submissions by non-disputing Party (a State or a regional economic integration organization) to the investment treaty; (iv) allowing open hearings; and (v) preserving the existing power of arbitral tribunals to allow closed proceedings and restrict access to documents, or portions thereof, when necessary to

¹ UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 11 July 2013, *Official Records of the General Assembly, Sixty-eighth Session Supplement No. 17 (A/68/17)*, Annex I.

protect confidential and sensitive information and the integrity of the arbitral process. The Rules foresee the Secretary-General of the United Nations to perform the repository function, through the UNCITRAL secretariat (the ‘Transparency Registry’). Information to be made publicly available will be published via the UNCITRAL website.

The Rules on Transparency apply to disputes under the UNCITRAL Arbitration Rules arising under investment treaties concluded after 1 April 2014, unless otherwise agreed by the Parties to the treaty. The Rules may also become applicable to disputes under investment treaties concluded before that date where there is an express consent of the Parties to the investment treaty or between disputing parties for their application. In addition, the Parties to an investment treaty or the disputing parties may agree to apply the Rules on Transparency to arbitrations under sets of rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings.

- *The Convention, an efficient mechanism to make the Rules on Transparency applicable to investor-State arbitration under investment treaties concluded before 1 April 2014*

Article 2, a key provision of the Convention, determines when and how the Rules on Transparency shall apply to investor-State arbitration within the scope of the Convention. In addition to the general rule of application stipulated in paragraph 1 (bilateral or multilateral application), paragraph 2 refers to the application of the Rules on Transparency when only the respondent State (and not the State of the investor-claimant) is a party to the Convention (unilateral offer of application).

A Party to the Convention has the flexibility to formulate reservations, thereby excluding from the application of the Convention a specific investment treaty or a specific set of arbitration rules other than the UNCITRAL Arbitration Rules (negative-list approach). A Party may also declare that it would not provide unilateral offer of application. Lastly, in the event the Rules on Transparency would be revised, it may also declare, within a limited period of time after such revision, that it would not apply that revised version. By defining specific timings for formulation and withdrawal of reservations, the Convention provides the necessary level of flexibility, while ensuring that reservations cannot be used to defeat the purpose of the Convention. The Convention and any reservation thereto apply prospectively, that is to arbitral proceedings commenced after the entry into force of the Convention for the Party concerned.

- *The benefit of those instruments*

The UNCITRAL standards on transparency - the Rules on Transparency, the Convention and the Transparency Registry are the most recent successful results of a multilateral endeavour to reform investment arbitration. The Rules on Transparency provide of a set of procedural rules that ensures transparency and accessibility to the public of treaty-based investor-State arbitration, the proceedings of which have been conducted usually behind closed doors. Together with the Rules on Transparency, the Convention takes into the account both the public interest in such arbitration and the interest of the parties to arbitration to resolve disputes in a fair and efficient manner. Overall, it is expected that the Convention would significantly contribute to enhancing transparency in investor-State dispute resolution regime.

The Convention is based on the fundamental principles of good governance and human rights. Transparency and inclusiveness are expressions of core United Nations values.

The Convention is to be considered in the context of foreign direct investment as a tool for the long term sustainable growth of developing countries. Investment arbitration arises out of a body of law that has “development” as one of its overall objectives. The purpose of the Convention is to make public information on disputes arising from such investments, thereby contributing to building confidence in the existing international investment framework.

Further, the Convention constitutes an important step to respond to the increasing challenges regarding the legitimacy of international investment law and arbitration as such. Those challenges include, among others: an increasing number of treaty-based Investor-State arbitrations, including an increasing number of frivolous claims; increasing amount of awarded damages; increasing inconsistency of awards and concerns about the lack of predictability and legal stability; and uncertainties regarding how the investor-State dispute settlement system interacts with important public policy considerations. The Convention is meant to enhance the public understanding of the process and its overall credibility.

Procedure for becoming a party

1. Signature

1. The Convention is open for signature in Port Louis, Mauritius, on 17 March 2015, and thereafter at the United Nations Headquarters in New York (article 7(1) of the Convention).

2. Under established international practice, only Heads of State, Heads of Government or Ministers for Foreign Affairs are empowered, by virtue of their functions, to sign multilateral treaties on behalf of States without having to produce full powers to that effect. Other representatives intending to sign the Convention must have the appropriate full powers, issued by one of these authorities, which expressly authorize signing the Convention by a named representative. States or regional economic integration organizations wishing to sign the Convention should, as necessary, provide copies of the required full powers in advance to the Treaty Section, Office of Legal Affairs, at United Nations Headquarters (Address: 2 UN Plaza – 323 E 44th street, Room DC2-0520, New York, NY 10017, United States of America. Tel.: + 1-212-963-5047. Fax: + 1-212-963-3693. Email: villalpando@un.org, mutirende@un.org).

3. By signing the Convention, a State or regional economic integration organization signals its intention to become a party to it in the future. Once it has signed the Convention, a State or regional economic integration organization must not act in a manner that would defeat the object and purpose of the Convention prior to its entry into force (see article 18, *Vienna Convention on the Law of Treaties, 1969*).

4. A State or regional economic integration organization may sign the Convention at any time. Signing should be arranged with the Treaty Section of the United Nations Office of Legal Affairs (contact information above, in para. 2). While some treaties do not leave open the period for signing, this Convention is open for signing indefinitely.

2. Consent to be bound (ratification, acceptance, approval or accession)

5. Instruments of ratification, acceptance, approval or accession become effective only when the State or regional economic integration organization deposits it with the Secretary-General of the United Nations, who is designated as the depositary of the Convention (article 6 of the Convention). The depositary functions of the Secretary-General are discharged by the Treaty Section of the United Nations Office of Legal Affairs (contact information above, in para. 2). When feasible, the State or regional integration organization should provide courtesy translations, in English and/or French, of instruments that are in other languages. This will help ensure that the instrument is promptly processed.

6. When depositing an instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall inform the depositary of a specific investment treaty to which it is a contracting party, identified by title of the investment treaty and name of the contracting parties to that investment treaty (article 8(1) of the Convention).

3. Entry into force

7. The Convention entered into force on 18 October 2017 after ratification by Mauritius, Canada and Switzerland.

For all other States or regional economic integration organizations, the Convention will enter into force six months after the date on which that State or regional economic integration organization deposited its instrument of ratification, acceptance, approval or accession with the UN Secretary-General.

4. Reservations

8. The Convention allows certain reservations pursuant to article 3(1) and (2). Reservations other than those specified under article 3(1)(a), (b) and (c), and article 3(2) are not permitted (article 3(4) of the Convention).

Negative-list approach

9. The Convention takes a negative-list approach, i.e., a Party that wishes to exclude a specific investment treaty and/or a specific set of arbitration rules from the application of the Convention under article 3(1) must explicitly list such treaty and/or set of arbitration rules to that effect in the reservation.

Deposit of reservations

10. Reservations must be formally notified to the depositary. They can be deposited at any time, except for a reservation under article 3(2) which must be formulated within six months of the adoption of a revised version of the UNCITRAL Rules on Transparency.

Acceptance and objection to reservations - Effect

11. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval and take effect simultaneously with the entry into force of the Convention in respect of the Party concerned (article 4(2) of the Convention).

12. Reservations made at the time of ratification, acceptance or approval of the Convention or accession thereto take effect simultaneously with the entry into force of the Convention in respect of the Party concerned (article 4(3) of the Convention).

13. A reservation made under article 3(2) takes effect immediately upon deposit. All other reservations deposited after the entry into force of the Convention for the Party concerned shall take effect twelve months after the date of its deposit (article 4(4) of the Convention).

Withdrawal of reservations

14. A Party may withdraw a reservation at any time. Such withdrawal is to be deposited with the depositary, and takes effect upon deposit (article 4(6) of the Convention).

15. In accordance with article 3(3) of the Convention, Parties may make multiple reservations in a single instrument. In such an instrument, each declaration shall constitute a separate reservation capable of separate withdrawal.

For further information relating to the legal requirements for signature, consent to be bound, entry into force and reservations, please refer to the Treaty Handbook, prepared by the Treaty Section of the United Nations Office of Legal Affairs, available online in the United Nations Treaty Collection (<https://treaties.un.org>):

https://treaties.un.org/Pages/Publications.aspx?pathpub=Publication/TH/Page1_en.xml

ANNEX 1 – MODEL INSTRUMENT OF FULL POWERS

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs, or
Representative of regional economic integration organization)**

FULL POWERS

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs /
Representative of regional economic integration organization],

HEREBY AUTHORIZE [name and title] to sign the United Nations Convention on
Transparency in Treaty-based Investor-State Arbitration done at [place] on [date] on behalf of
[the Government of (name of State) / name of regional economic integration organization].

Done at [place] on [date].

[Signature]

**ANNEX 2 – MODEL INSTRUMENT OF RATIFICATION,
ACCEPTANCE OR APPROVAL**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs, or
Representative of regional economic integration organization)**

[RATIFICATION / ACCEPTANCE / APPROVAL]

WHEREAS the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration was [concluded, adopted, opened for signature] at [place] on [date],

AND WHEREAS the said Convention has been signed on behalf of [the Government of (name of State) / name of regional economic integration organization] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs / Representative of regional economic integration organization] declare that [the Government of (name of State) / name of regional economic integration organization], having considered the above-mentioned Convention, [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

ANNEX 3 – MODEL INSTRUMENT OF ACCESSION

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs, or
Representative of regional economic integration organization)**

ACCESSION

WHEREAS the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration was [concluded, adopted, opened for signature] at [place] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs / Representative of regional economic integration organization] declare that [the Government of (name of State) / name of regional economic integration organization], having considered the above-mentioned Convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]

ANNEX 4.A – MODEL INSTRUMENT OF RESERVATION

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs, or
Representative of regional economic integration organization)**

(Parties may make multiple reservations in a single instrument)

[RESERVATION]

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs / Representative of regional economic integration organization],

HEREBY DECLARE that [the Government of (name of State) / name of regional economic integration organization] makes the following reservation(s) in relation to [article 3(1)(a) / (1)(b) / (1)(c)] of the Convention on Transparency in Treaty-based Investor-State Arbitration:

[Reservation(s) in relation to article 3(1)(a):

*The Convention shall not apply to the following investment treaty[ies]:
[title of the investment treaty[ies] and name of contracting parties]];*

[Reservation(s) in relation to article 3(1)(b):

*Article 2(1) and (2) of the Convention shall not apply to arbitrations
conducted under the following arbitration rules:
[name of arbitration rules or procedures other than the UNCITRAL
Arbitration Rules]]*

[Reservation in relation to article 3(1)(c):

*Article 2(2) of the Convention shall not apply in investor-State arbitration
in which [the Government of (name of State) / name of the regional
economic integration organization] is a respondent.]*

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date]. [Signature and title]

[ANNEX 4.B – MODEL INSTRUMENT OF RESERVATION

**RELEVANT ONLY IF THE UNCITRAL RULES ON TRANSPARENCY WOULD
BE REVISED IN THE FUTURE]**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs, or
Representative of regional economic integration organization)**

**(This instrument must be deposited within six months of the adoption of a revision
to the UNCITRAL Rules on Transparency in Treaty-Based Investor-State
Arbitration)**

[RESERVATION / DECLARATION]

I, [name and title of the Head of State, Head of Government or Minister for Foreign
Affairs / Representative of regional economic integration organization],

HEREBY DECLARE that [the Government of (name of State) / name of regional
economic integration organization] makes the following [reservation / declaration] in
relation to article 3(2) of the Convention on Transparency in Treaty-based Investor-State
Arbitration:

*[Article 2(3) of the Convention shall not apply to [the Government of
(name of State) / name of the regional economic integration organization]
in relation to the revised version of the UNCITRAL Rules on
Transparency as adopted on (date).]*

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]]

**ANNEX 5 – MODEL INSTRUMENT OF WITHDRAWAL OF
RESERVATION(S)**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs, or
Representative of regional economic integration organization)**

WITHDRAWAL OF RESERVATION (S)

WHEREAS [the Government of (name of State) / name of regional economic integration organization] [ratified, approved, accepted, acceded to] the Convention on Transparency in Treaty-based Investor-State Arbitration on [date],

AND WHEREAS, upon [ratification, approval, acceptance of / accession to] the Convention, [the Government of (name of State) / name of regional economic integration organization] made (a) reservation(s) under article(s) [---] of the Convention,

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs / Representative of regional economic integration organization], declare that [the Government of (name of State) / name of regional economic integration organization], having reviewed the said reservation(s), hereby withdraws [the same][the following reservations: [---]].

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]