

## **Multilateral Permanent Investment Tribunal**

### ***Informal online meeting on 13-14 September 2021, 1 to 3 pm (CEST)***

The UNCITRAL Secretariat is organizing two two-hour informal meetings on 13 and 14 September 2021 on the possible establishment of a multilateral permanent investment tribunal.

The purpose of the meetings is to consider informally the draft document prepared by the Secretariat on the selection and appointment of ISDS tribunal members (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 establishment and jurisdiction of a multilateral permanent investment tribunal;
- The selective representation and its impact on the number of tribunal members;
- The nomination, selection, and appointment processes, as well as other matters such as the terms of office, conditions of service, and assignment of cases; and
- Other issues relevant to the establishment of a multilateral permanent investment tribunal.

The discussions will be guided by the Chair and the 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 meeting link will be circulated in due course.

# Programme

## 13 September

### ***Opening of the meeting and introduction***

*Welcome remarks by Anna Joubin-Bret, Secretary, UNCITRAL.*

*Introduction into the topics scheduled to be addressed this day by Natalie Morris-Sharma, Rapporteur, Working Group III and Shane Spelliscy, Chair, Working Group III.*

### ***Topics for consideration***

#### **1. Establishment and jurisdiction of a multilateral permanent investment tribunal**

The discussion will be conducted on the basis of draft provisions 1 to 3 (see paras. 7-11) and delegations will be invited to consider the draft provisions. Consideration of more general questions pertaining to this topic are scheduled for day 2 (see agenda item 5, other matters).

#### **2. Selective representation and its impact on the composition of the tribunal**

The discussion will be conducted on the basis of draft provisions 4 and 5 (see paras. 12-22) and delegations will be invited to consider:

- The procedure for the evolution over time of the number of adjudicators;
- The qualifications and other requirements;
- The role of nationality; and
- The possible participation of ad hoc tribunal members.

## 14 September

### ***Introduction***

*Introduction into the topics of the day by Natalie Morris-Sharma, Rapporteur, Working Group III and Shane Spelliscy, Chair Working Group III.*

### ***Topics for consideration***

#### **3. Nomination, selection and appointment of tribunal members**

The discussion will be conducted on the basis of draft provisions 6 to 8 (see paras. 23-41) and delegations will be invited to consider:

- The possible options for the nomination of candidates (article 6, options 1 and 2);
- The proposal for a selection panel (article 7); and
- The procedure for appointment (article 8) and whether there should be differentiated procedures for the appointment of tribunal members based on the level of adjudication.

#### **4. Term of office, renewal and removal – Conditions of services – Assignment of cases**

Delegations will be invited to consider matters regarding the terms of office, renewal of terms and removal from office of tribunal members (article 9) and the options for addressing these matters (see paras. 42-49).

They will also be invited to consider the conditions of services (article 10, and paras. 50-52) as well as the procedures for assigning cases (article 11, and paras. 53-58).

#### **5. Other matters**

Time permitting, delegations will be invited to consider the following matters pertaining to the establishment and functioning of a multilateral permanent tribunal covered under Section III of the draft note under paras. 59-73. These matters may serve to contextualize the draft provisions:

- Establishment of the tribunal, including whether the tribunal would be created under the auspices of an existing international organisation such as the United Nations, or be established as a separate, independent international organisation (para. 61);
- Governance structure, including which organs might be set-up under the agreement establishing the tribunal (statute); and whether a standing multilateral mechanism might also be used to host an advisory centre on international investment law and mediation related services (paras. 62-64);
- Issues related to the procedural framework of a tribunal (see paras. 65-67); and
- Applicable law and treaty interpretation (see paras. 68 and 69).

### **Background documents**

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

- Initial Draft on a Standing multilateral mechanism: Selection and appointment of ISDS tribunal members and matters related to a standing mechanism, available on the [UNCITRAL webpage for initial drafts](#).
- [A/CN.9/1050](#), Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-eighth session (Vienna, 14–18 October 2019), paras. 17-56; and [A/CN.9/WG.III/WP.203](#) - Possible reform of investor-State dispute settlement (ISDS) – Selection and appointment of ISDS tribunal members.
- Academic Forum on ISDS papers available at <https://www.ius.uio.no/plu-ricourts/english/projects/leginvest/academic-forum/papers/>