

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

*Informal online meeting
23-24 March 2022, 1 to 3 pm (Vienna, Austria time)*

The UNCITRAL Secretariat is organizing, jointly with the Secretariat of ICSID, a two-day informal meeting on the draft code of conduct for adjudicators in international investment disputes.

The purpose of the meeting is to consider informally the redraft of articles 1 to 8, as contained in [document CRP.2](#) and to consider certain questions in relation to the preparation of a redraft of articles 9 to 11, following the 42nd session of the Working Group.

The purpose of informal meetings generally is to explore topics in detail in order to support delegations in their preparation for the next Working Group meetings at which these topics 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. The discussions will be guided by the Chair and the Rapporteur who will briefly introduce the topics. Interested delegations will be invited to make brief introductory remarks. Delegations will then be invited to informally raise any questions, share their views, and make suggestions.

The meeting 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 are not able to attend, and to highlight the proposals made. Comments will not be attributed to States or specific delegates.

The meeting is open for participation to all UNCITRAL Working Group III delegations.

The meeting will be held online. Please, connect on 23-24 March 2022, at 1-3 pm (Vienna, Austria time) at:

<https://us02web.zoom.us/j/82387305490?pwd=dmpI0GY5ZGIYcjZ3MUJaMzZqZ04yZz09>

No meeting ID or password is required.

Programme

Day 1:

Opening of the meeting

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

Consideration of articles 1 to 8

Participants will be invited to consider draft provisions 1 to 8 of the draft code of conduct (CRP.2).

Day 2:

Participants will continue the review of draft provisions on the agenda of Day 1 and once completed, will be invited to consider questions to assist the Secretariat in a redraft of articles 9 to 11 in line with the deliberations of the Working Group at its 42nd session, which would include, for instance:

- As a general drafting point, whether use of the plural form of the terms “Adjudicators”, “Arbitrators”, “Judges” would be generally more appropriate when outlining their obligations;

Regarding draft article 9:

- Whether the terms “Unless otherwise regulated by the applicable rules or treaty” in paragraph 1 could be deleted, as the complementary nature of the Code is already enshrined in revised article 2(2) and the terms would otherwise need to be replicated in paragraphs 2 and 3;

- Whether the term “concluded” in paragraph 1 could be replaced by “conducted with the disputing parties”, if the aim is solely to highlight the need for the arbitral tribunal to consult the parties on any fees and expenses and not to provide that such fees should be already agreed upon or fixed during such discussion;

- Whether a discussion on fees and expenses “before” the constitution of the arbitral tribunal between an arbitrator appointed by one of the disputing parties

and a disputing party could be understood as a type of *ex parte* communication allowed under article 7;

Regarding draft article 10:

- As a general drafting point, whether the terms “in” before the words “the past five years” should be used throughout article 10 in lieu of “within”;
- Whether paragraph 4 could be reworded along the following lines: “Adjudicators, from the time of appointment/confirmation and throughout the proceedings, shall without delay disclose new or newly discovered information which is likely to give rise to justifiable doubts [, including in the eyes of the disputing parties,] as to their independence or impartiality.”;
- Whether paragraph 6 could be reworded along the following lines: “Following disclosure, the disputing parties may waive their respective rights to raise an objection with respect to circumstances that were disclosed.”

Regarding draft article 11:

- Whether it could be clarified in article 11 that Candidates shall not accept an appointment and Adjudicators shall resign or recuse themselves if no longer in a position to comply with the Code;
- Whether paragraph 2, which refers to the application to the Code of disqualification and removal procedures found in the applicable rules or treaties, could be redrafted to better reflect the possible interaction of such procedures with the Code;
- Whether the Code or Commentary could provide clarification in article 11 on how the Code would be implemented if non-compliance does not necessarily result in disqualification or removal under the applicable rules or underlying instruments.

Background documents

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

- [A/CN.9/WG.III/XLII/CRP.2 - Possible reform of investor-State dispute settlement \(ISDS\) - Revised version of the draft Code of Conduct](#)
- [A/CN.9/WG.III/WP.209 - Possible reform of investor-State dispute settlement \(ISDS\) – Draft Code of Conduct](#)
- [A/CN.9/WG.III/WP.208 - Investor-State dispute settlement \(ISDS\) reform – Draft code of conduct: Means of implementation and enforcement](#)
- [A/CN.9/WG.III/WP.201 - Possible reform of investor-State dispute settlement \(ISDS\) – Draft code of conduct](#)
- [A/CN.9/WG.III/WP.167 - Background information on a code of conduct](#)
- [A/CN.9/WG.III/WP.151 - Ensuring independence and impartiality on the part of arbitrators and decision makers in ISDS](#)
- [A/CN.9/1086 - Report of Working Group III \(Investor-State Dispute Settlement Reform\) on the work of its forty-first session \(Vienna, 15-19 November 2021\)](#)
- [A/CN.9/1050 - Report of Working Group III \(Investor-State Dispute Settlement Reform\) on the work of its fortieth session](#)
- [A/CN.9/1004* - Report of Working Group III \(Investor-State Dispute Settlement Reform\) on the work of its thirty-eighth session](#)
- [A/CN.9/964 - Report of Working Group III \(Investor-State Dispute Settlement Reform\) on the work of its thirty-sixth session](#)
- [A/CN.9/935 - Report of Working Group III \(Investor-State Dispute Settlement Reform\) on the work of its thirty-fifth session](#)
- [A/CN.9/930/Add.1/Rev.1 - Report of Working Group III \(Investor-State Dispute Settlement Reform\) on the work of its thirty-fourth session - Part II](#)