UNCITRAL Working Group III on ISDS Reform

Questionnaire on the establishment of an advisory centre on investor-State dispute settlement (ISDS)

At the thirty-eighth session of UNCITRAL Working Group III in October 2019, general support was expressed for establishing an advisory centre on investor-State dispute settlement (ISDS).

The purpose of this questionnaire is to assist in the preparatory work on the establishment of such an advisory centre, which requires careful identification of the needs of potential beneficiaries, and a determination of the potential structure and financing of the centre.

*Information on the deliberations of the UNCITRAL Working Group III on this topic can be found in document A/CN.9/1004\*, paras. 28 to 50 (see also document A/CN.9/WG.III/WP.168, available at* [*https://uncitral.un.org/en/working\_groups/3/investor-state*](https://uncitral.un.org/en/working_groups/3/investor-state)*). Other resources include the Academic Forum on ISDS* [*Concept Paper 2019/14*](https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/papers/papers/sauvant-advisory-center-isds-af-14-2019.pdf)*, An Advisory Centre on International Investment Law: Key Features, Karl P. Sauvant, available at* [*https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/*](https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/) *as well as a scoping study by the Columbia Centre for Sustainable Investment (CCSI) on behalf of the Government of the Netherlands (to be made available at* [*https://uncitral.un.org/en/working\_groups/3/investor-state*](https://uncitral.un.org/en/working_groups/3/investor-state)*).*

1. **Identification of government representative**

|  |  |
| --- | --- |
| Name\* |  |
| Ministry / Position\* |  |
| Address |  |
| Address 2 |  |
| City/Town |  |
| State/Province |  |
| ZIP/Postal Code |  |
| Country\* |  |
| Email Address\* |  |
| Phone Number |  |

\* Required fields

1. **Scope of services**

The purpose of the questions below is to explore possible services of an advisory centre based on identified needs of potential beneficiaries.

2.1 What advisory/support services should be offered by an advisory centre?

|  |
| --- |
| (1) Assistance in organizing the defence in ISDS cases and support during the proceedings, including: - Arbitrator selection, best practices on procedural issues, strategy, risk assessment, evidence collection - Representation at arbitral proceedings |[ ]
| (2) General advisory services, including: - Assessment of international investment policy-making priorities and international investment instruments  - Setting up of conflict management systems (such as domestic implementation of, and education surrounding, obligations contained in international investment instruments, early dispute prevention policy, alert procedures, establishment of a lead agency, and setting up a litigation team) | [ ]   |
| (3) Alternative dispute resolution services, in particular mediation, including: - Administering ADR  - Provision of roster of mediators |[ ]
| (4) Capacity-building and sharing of best practices  - For investment policy and/or investment disputes - Including for instance, through training programmes, offering trainee and secondment positions, and by providing information on ISDS, including managing a database of cases |[ ]
| (5) Other (Please specify):  |

2.2. If services related to the assistance in organizing the defence (case specific) and support during the proceedings should be offered (see option (1) under 2.1. above), what range of services should they entail (please select all that apply)?

|  |
| --- |
| (1) Limited: for instance, virtual library to provide access to research; translation of resources; regular, free, or low-cost workshops on a range of topics |[ ]
| (2) Intermediate: for instance, assistance on discrete/time sensitive issues upon request such as initial legal memos analysing claims; quick due diligence on investor claimants; support with procurement of counsel; support with identifying potential adjudicators/experts | [ ]   |
| (3) Extensive: role akin to outside counsel that would have primary responsibility for the litigation |[ ]
| (4) N.A. |[ ]
| (5) Other (Please specify):  |

2.3 Please select a priority level for each of the services (see more detailed description of services above).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | High priority | Medium priority | Low priority | N.A.  |
| (1) Assistance in organizing the defence (case specific) and support during the proceedings  |[ ] [ ] [ ] [ ]
| (2) General advisory services |[ ] [ ] [ ] [ ]
| (3) Alternative dispute resolution services |[ ] [ ] [ ] [ ]
| (4) Capacity-building and sharing of best practices  |[ ] [ ] [ ] [ ]
| (5) Other service(s) indicated above under “other” |[ ] [ ] [ ] [ ]
| (6) Other (Please specify):  |

2.4. Do you have any additional comments on the scope of services of an advisory centre?

|  |
| --- |
|  |

1. **Existing advisory services or capacity-building support**

The purpose of the questions below is to explore a specific type of service: capacity building. The preparatory work on the establishment of an advisory centre is meant to explore capacity building and training of government officials, including in: (i) treaty negotiations and the interpretation of investment obligations; (ii) dispute prevention and risk assessment; and (iii) tools and skills related to the proceedings. In that context, information on available capacity building activities and their usefulness, as well as on the desired activities is needed.

3.1. What forms of existing advisory services and capacity-building support are you aware of in the context of investor-State dispute settlement?

|  |
| --- |
|  |

3.2 Are these existing services provided by States, international or regional organizations (including inter-governmental, non-governmental organization, academic institutions and arbitral institutions), law firms or other consultants?

|  |
| --- |
| (1) States (i.e. programs sponsored by States/State agencies)  |[ ]
| (2) Inter-governmental organizations |[ ]
| (3) Non-governmental organizations |[ ]
| (4) Academic institutions  |[ ]
| (5) Arbitral institutions |[ ]
| (6) Law firms |[ ]
| (7) Other Consultants |[ ]
| (8) Other (please specify): |

3.3. Has your country consulted any of these advisory services or capacity-building support in the context of investor-State dispute settlement?

|  |
| --- |
| (1) Yes, frequently (10 times or more) |[ ]
| (2) Yes, rarely (1-9 times) |[ ]
| (3) No |[ ]
| (4) Information not available |[ ]
| (5) Other (please specify):  |

3.4. Please provide information regarding the provider and the nature of these services used and their usefulness.

|  |
| --- |
|  |

3.5. In which area is there a need for additional capacity building activities that could be undertaken by an advisory centre?

|  |
| --- |
|  |

**4. Financing models and structure**

With regard to the financing of an advisory centre, two options are often cited: (i) the advisory centre being financed by its members, by a fund established by participating developed States or voluntary contributions from other sources; and (ii) the possibility of the advisory centre charging a fee for its services or a fee to the users of the ISDS system. A mix of both options could also be envisaged.

4.1. Please indicate which financing model or combination of financing models should be prioritized in the further discussions on the establishment of an advisory centre.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | High priority | Medium priority | Low priority | N.A. |
| (1) Financing by members |[ ] [ ] [ ] [ ]
| (2) Fund established by participating developed States |[ ] [ ] [ ] [ ]
| (3) Voluntary contributions from other sources |[ ] [ ] [ ] [ ]
| (4) Fees charged for services (potential sliding scale with fees depending on country’s level of development/ or on the service used) |[ ] [ ] [ ] [ ]
| (5) Fees charged to the users of the ISDS system |[ ] [ ] [ ] [ ]
| (6) Other (please specify): |

4.1 Please indicate what form an advisory centre should take.

|  |
| --- |
| (1) As an intergovernmental body |[ ]
| (2) Through appropriate existing institutions |[ ]
| (3) Other (please specify any appropriate existing institutions and/or any other option):  |

4.2 Please indicate what structure an advisory centre should have.

|  |
| --- |
| (1) Single advisory centre providing services globally |[ ]
| (2) Regional advisory centers in order to broaden geographical reach |[ ]
| (3) Other (please specify):  |

4.3 Do you have any additional comments on the establishment of an advisory centre in general?

|  |
| --- |
|  |