

CIL-NYU Investment Conference

Bibliography

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I. UNCITRAL WGIII submissions

The UNCITRAL Working Group III (“WGIII”) is a working group that focuses on investor-State dispute settlement (“ISDS”) reform. All Asian States participate in the WGIII. This bibliography contains the submissions made by Asian countries in the WGIII’s various sessions.

A. General

Enumerating a reform agenda relative to outstanding concerns with ISDS

UNCITRAL WG III, [*Possible reform of Investor-State dispute settlement \(ISDS\) Comments by the Government of Thailand*](#), U.N. Doc. A /CN.9/WG.III/WP.147 (11 April 2018), at 2.

UNCITRAL WG III, [*Possible reform of investor-State dispute settlement \(ISDS\) Submission the Government of Indonesia*](#), U.N. Doc A /CN.9/WG.III/WP.156 (9 November 2018), para 5-6.

UNCITRAL WG III, [*Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand*](#), U.N. Doc. A /CN.9/WG.III/WP.162 (8 March 2019), at 2-3.

UNCITRAL WG III, [*Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel and Japan*](#), U.N. Doc. A /CN.9/WG.III/WP.163 (15 March 2019).

UNCITRAL WG III, [*Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel, Japan, Mexico and Peru*](#), A /CN.9/WG.III/WP.182 (2 October 2019), at 2.

B. Tribunals, Ad Hoc and Standing Multilateral Mechanism

(1) Multilateral advisory centre

Addressing the merits of an advisory center and/or a set of guidelines to guide states in managing investment disputes.

UNCITRAL WG III, [Possible reform of Investor-State dispute settlement \(ISDS\) Comments by the Government of Thailand](#), U.N. Doc. A /CN.9/WG.III/WP.147 (11 April 2018), paras 19-21.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand](#), U.N. Doc. A /CN.9/WG.III/WP.162 (8 March 2019), paras 25-27.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Republic of Korea](#), U.N. Doc A /CN.9/WG.III/WP.179 (31 July 2019), at 5.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of the Netherlands, Peru and Thailand](#), U.N. Doc A /CN.9/WG.III/WP.196 (19 March 2020), at 3-6.

(2) *Stand-alone review or appellate mechanism*

Addressing the need for a review or appeals mechanism to respond to concerns over the lack of consistency and coherence in investment rulings and/or to correct errors in them.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of China](#), U.N. Doc. A /CN.9/WG.III/WP.177 (19 July, 2019), at 4.

UNCITRAL WG III, [Comments from the Government of the Republic of Korea on appellate mechanism and selection and appointment of arbitrators \(40th session 8-12 February 2021, Vienna\)](#), at 1-4.

C. Arbitrators and Adjudicators Appointment Methods and Ethics

(1) *ISDS tribunal members' selection appointment and challenge*

Addressing possible reforms to the method for selecting or challenging arbitrators.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 20.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of China, U.N. Doc. A /CN.9/WG.III/WP.177 \(19 July, 2019\)](#), at 5.

UNCITRAL WG III, [Comments from the Government of the Republic of Korea on appellate mechanism and selection and appointment of arbitrators \(40th session 8-12 February 2021, Vienna\)](#), at 4.

(2) *Code of Conduct*

Addressing the merits of a possible code of conduct/ethics for arbitrators.

UNCITRAL WG III, [Possible reform of Investor-State dispute settlement \(ISDS\) Comments by the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.147 \(11 April 2018\)](#), para 12-14.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 21.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel and Japan, U.N. Doc. A /CN.9/WG.III/WP.163 \(15 March 2019\)](#), at 9.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of China, U.N. Doc. A /CN.9/WG.III/WP.177 \(19 July, 2019\)](#), at 5.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel, Japan, Mexico and Peru, A /CN.9/WG.III/WP.182 \(2 October 2019\)](#), at 4.

UNCITRAL WG III, [Comments from the Government of the Republic of Korea on appellate mechanism and selection and appointment of arbitrators \(40th session 8-12 February 2021, Vienna\)](#), at 4-5.

D. Treaty Parties' Involvement and Control Mechanisms on Treaty Interpretation

Addressing the merits of binding joint interpretations by State parties to international investment agreements (“IIAs”).

UNCITRAL WG III, [Possible reform of Investor-State dispute settlement \(ISDS\) Comments by the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.147 \(11 April 2018\)](#), para 13.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 22.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel, Japan, Mexico and Peru, A /CN.9/WG.III/WP.182 \(2 October 2019\)](#), at 3.

E. Dispute Prevention and Mitigation

Addressing the merits of non-binding alternatives to ISDS such as ombudspersons or mediation

UNCITRAL WG III, [Possible reform of Investor-State dispute settlement \(ISDS\) Comments by the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.147 \(11 April 2018\)](#), paras 6-7.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission the Government of Indonesia, U.N. Doc A /CN.9/WG.III/WP.156 \(9 November 2018\)](#), para19.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 24.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of China, U.N. Doc. A /CN.9/WG.III/WP.177 \(19 July, 2019\)](#), at 5.

(1) *Exhaustion of local remedies*

Discussing the merits of requiring exhaustion of local remedies as a pre-requisite to ISDS.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission the Government of Indonesia, U.N. Doc A /CN.9/WG.III/WP.156 \(9 November 2018\)](#), para 17.

(2) *Procedure to address frivolous claims, including summary dismissal*

Discussing proposals to enable early dismissal of frivolous claims and/or defenses.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel, Japan, Mexico and Peru, A /CN.9/WG.III/WP.182 \(2 October 2019\)](#), at 2.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission the Government of Indonesia, U.N. Doc A /CN.9/WG.III/WP.156 \(9 November 2018\)](#), paras 8-9.

(3) *Multiple proceedings, reflective loss and counterclaims by respondent States*

Discussing proposals to limit shareholder claims, treaty shopping, and better address counterclaims by respondent states.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Republic of Korea, U.N. Doc A /CN.9/WG.III/WP.179 \(31 July 2019\)](#), at 6.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Governments of Chile, Israel, Japan, Mexico and Peru, A /CN.9/WG.III/WP.182 \(2 October 2019\)](#), at 3-4.

F. Cost Management and Related Procedures

(1) *Expedited procedures*

Discussing the merits of set time frames within ISDS.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 17.

(2) *Principles/guidelines on allocation of cost and security for cost*

Discussing the merits of clear rules on the allocation of and security for costs.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 16-19.

G. Third-party Funding

Addressing proposals for full disclosure of third-party funding.

UNCITRAL WG III, [Possible reform of Investor-State dispute settlement \(ISDS\) Comments by the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.147 \(11 April 2018\)](#), para 18.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of Thailand, U.N. Doc. A /CN.9/WG.III/WP.162 \(8 March 2019\)](#), para 18.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Government of China, U.N. Doc. A /CN.9/WG.III/WP.177 \(19 July, 2019\)](#), at 5.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission from the Republic of Korea, U.N. Doc A /CN.9/WG.III/WP.179 \(31 July 2019\)](#), at 4-5.

H. The Other Issue (Separate written consent requirement)

Discussing a proposal to require the State's written consent or special agreement to enable ISDS.

UNCITRAL WG III, [Possible reform of investor-State dispute settlement \(ISDS\) Submission the Government of Indonesia, U.N. Doc A /CN.9/WG.III/WP.156 \(9 November 2018\)](#), para 18.

II. ICSID Submissions

The International Centre for Settlement of Investment Disputes (ICSID) is amending its rules and regulations, including those related to ISDS. Four working papers have been created by the ICSID Secretariat. It accepts consolidated feedback from States on each set of proposals. This bibliography contains the submissions made by Asian countries to the working papers.

A. *General Duties for Tribunals*

Addressing the general principles that the Tribunals should follow.

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 103. (Japan)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 47. (Australia)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 48. (Korea)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 48. (Singapore)

B. *Conduct of the Proceeding*

(1) *Method of Filing*

Addressing the merits of documents submitted electronically.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 75. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 78. (Singapore)

(2) *Documents*

Addressing the need to reform of the procedure to submit documents.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 52. (Singapore)

ICSID, COMMENTS ON WORKING PAPER # 3, at 14-15. (Singapore)

(3) *Procedural Languages*

Addressing the need to reform of the procedure for choosing procedural languages and the necessity of the translation for the documents.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 85. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 53. (Korea)

ICSID, Compendium of Comments for Working Paper # 4, at 14. (Korea)

(4) *Time Limits*

Addressing the merit of time limits for submissions and evidence and the other issues.

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 100. (Japan)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 57. (Korea)

C. Constitution of the Tribunal

(1) *Third-party Funding*

Addressing the proposal for full disclosure and notification of third-party funding.

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 154-55. (Australia)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 156-57. (China)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 160-162. (Indonesia)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 166. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 63. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 68. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 70-71. (Korea)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 71-72. (Singapore)

ICSID, COMMENTS ON WORKING PAPER # 3, at 17-18. (Singapore)

ICSID, COMMENTS ON WORKING PAPER # 3, at 18. (Korea)

ICSID, Compendium of Comments for Working Paper # 4, at 17-18. (China)

ICSID, Compendium of Comments for Working Paper # 4, at 20. (Indonesia)

(2) *Acceptance of Appointment*

Addressing possible reforms to the procedures to appoint arbitrators.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 207. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 207. (China)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 208-09. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 212. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 78. (Australia)

ICSID, COMMENTS ON WORKING PAPER # 3, at 23-24. (Singapore)

D. Disqualifications and Arbitrators and Vacancies

(1) *Disqualification of Arbitrators*

Addressing possible reforms to the method for challenging arbitrators.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 222-23. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 229. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 236. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 84. (Korea)

E. Chapter V – Initial Procedures

(1) *Orders, Decisions and Agreements*

Addressing the reforms of the procedures for the Tribunal’s to make orders and decisions.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 95. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 95. (Singapore)

(2) *First Session.*

Addressing the need to reform of the procedures for the initial procedures.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 245. (China)

(3) *Written Submissions and Observations*

Addressing the need to reform about written submission that parties should file.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 109-110. (China)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 114. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 115. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 414. (China)

(4) *Case Management Conference*

Addressing the proposal that the Tribunal should communicate with parties by management conferences.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 122-23. (Japan)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 101. (Australia)

F. Evidence

(1) *Evidence*

Addressing the possible reforms about the Tribunals' order and decision of admissibility and probative value of the evidence.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 285. (China)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 103. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 103 and 106. (Korea)

ICSID, Compendium of Comments for Working Paper # 4, at 27. (China)

(2) *Witnesses and Experts*

Addressing the possible reforms for the procedure of the witnesses and experts.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 294. (Japan)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 294. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 107. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 109. (Korea)

ICSID, COMMENTS ON WORKING PAPER # 3, at 30. (Korea)

G. Special procedures

(1) *Manifest Lack of Legal Merit*

Addressing the proposal for the procedures to object claims without legal merit.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 250. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 110. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 112. (Korea)

ICSID, COMMENTS ON WORKING PAPER # 3, at 30. (Korea)

(2) *Bifurcation*

Addressing the proposal for the request of bifurcation.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 266-67. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 268. (China)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 270. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 115. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 120. (Korea)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 121. (Singapore)

ICSID, Compendium of Comments for Working Paper # 4, at 31. (China)

(3) *Consolidation or Coordination on Consent of Parties*

Addressing the merits of consolidating or coordinating arbitrations.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 275. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 277. (China)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 279. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 280. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 122. (Singapore)

(4) *Provisional Measures*

Addressing the possible reform of the procedure of provisional measures.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 328. (Indonesia)

H. Cost

(1) *Payment and Decisions on Costs*

Addressing the proposal for the procedure of payment and decisions on costs.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 133. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 137. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 129. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 129. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 131. (Korea)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 131. (Singapore)

(2) *Security for Costs*

Addressing the merit of the Tribunal’s order to provide security for the costs

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 334. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 337-38. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 342. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 132. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 135. (Indonesia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 137. (Korea)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 138. (Singapore)

ICSID, COMMENTS ON WORKING PAPER # 3, at 34-35. (Singapore)

ICSID, COMMENTS ON WORKING PAPER # 3, at 35-36. (Korea)

ICSID, Compendium of Comments for Working Paper # 4, at 40. (China)

ICSID, Compendium of Comments for Working Paper # 4, at 41. (Indonesia)

ICSID, Compendium of Comments for Working Paper # 4, at 42. (Korea)

I. The Award

Addressing the possible reforms for determining the time for giving the award

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 368. (Australia)

J. Publication, Access to proceedings and Non-Disputing Party Submissions

(1) Publication of Awards and Decisions On Annulment

Addressing the proposal for the publishing awards and decisions

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 24. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 151. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 153. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 154. (Korea)

ICSID, COMMENTS ON WORKING PAPER # 3, at 40. (Korea)

(2) Observation of Hearings

Addressing the proposal for permission of observation of hearing.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 308. (Australia)

ICSID, COMMENTS ON WORKING PAPER # 3, at 42. (Korea)

(3) *Confidential or Protected Information*

Addressing issues about the need to deal with confidential or protected information

ICSID, *COMMENTS ON WORKING PAPER # 3*, at 43. (Korea)

ICSID, *COMMENTS ON WORKING PAPER # 3*, at 43. (Singapore)

(4) *Submission of Non-Disputing Parties*

Addressing the proposal for the procedure of written submission of Non-Disputing Parties.

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 311. (Australia)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 316-17. (Singapore)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 158. (Korea)

ICSID, *COMMENTS ON WORKING PAPER # 3*, at 44. (Korea)

ICSID, *Compendium of Comments for Working Paper # 4*, at 46. (Korea)

(5) *Participation of Non-Disputing Parties*

Addressing the proposal for the procedure of participation of Non-Disputing Parties.

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 319. (Australia)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 322. (Singapore)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 160. (Australia)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 163. (Korea)

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019*, at 164-5. (Singapore)

ICSID, *COMMENTS ON WORKING PAPER # 3*, at 44. (Korea)

K. *Interpretation, Revision and Annulment of the Award*

Addressing the proposal for the procedures of interpretation, revision and annulment of the awards.

ICSID, *Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018*, at 380. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 381. (Singapore)

L. Expedited Arbitration

Addressing the need about the opting out of expedited arbitration.

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 392. (Singapore)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 174. (Singapore)

M. Others

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 418. (Japan)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 1 of August 3, 2018, at 497. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 10. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 21. (Australia)

ICSID, Rule Amendment Project – Member State & Public Comments on Working Paper # 2 of March 15, 2019, at 195. (Australia)

III. Model IIAs of East Asian States

A. *Active Model BITs of Asian States*

Asian States have drafted model bilateral investment treaties, which have not been superseded.

India [Model BIT \(2015\)](#).

China Draft Model BIT (no known date). See Norah Gallagher & Wenhua Shan, *Chinese Investment Treaties: Policies and Practice* (OUP, 2009), at pp. 439-452.

Thailand [Model BIT \(2002\)](#).

Korea Model BIT (2001). See Hi-Taek Shin, “Republic of Korea”, in *Commentaries on Selected Model Investment Treaties*, Chester Brown (ed), (OUP, 2013), at pp. 400-424.

Mongolia [Model BIT \(1998\)](#).

Malaysia [Model BIT \(1998\)](#).

Sri Lanka [Model BIT](#) (no known date).

Cambodia [Model BIT](#) (no known date).

Indonesia [Model BIT](#) (no known date).

China Model BIT (1997/1998). See Norah Gallagher & Wenhua Shan, *Chinese Investment Treaties: Policies and Practice* (OUP, 2009), at pp. 433-438.

China Model BIT (1992). See Norah Gallagher & Wenhua Shan, *Chinese Investment Treaties: Policies and Practice* (OUP, 2009), at pp. 427-432.

China Model BIT (1984). See Norah Gallagher & Wenhua Shan, *Chinese Investment Treaties: Policies and Practice* (OUP, 2009), at pp. 421-426.

B. Active Model BITs of Regional Organisations

Regional organisations in Asia have drafted model bilateral investment treaties, which have not been superseded.

[Asian-African Legal Consultative Committee Model Agreements 1985.](#)

C. Superseded Model BITs

The model bilateral investment treaties drafted by various Asian States that have been superseded are as follows.

India [Model BIT 2003.](#)

IV. Secondary materials re individual East Asian country treaty practice and regional treaty practice

A. General

Secondary materials regarding treaty practices in Asian countries.

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B. Individual Asian Country Treaty

(1) Australia

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(3) *Cambodia*

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(4) *China*

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(5) *Indonesia*

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(7) *Korea*

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(9) *Malaysia*

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(10) *Myanmar*

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(11) *New Zealand*

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(12) *Singapore*

European Parliament News, [Parliament gives green light to EU-Singapore trade and investment protection deals \(February 13, 2019\)](#).

(13) *Taiwan*

Taiwan News, [Taiwan and Philippines ink bilateral investment agreement, despite protests from China \(December 8, 2017\)](#).

(14) *Thailand*

Luke Nottage & Sakda Thanitcul, [Chapter 4: International Investment Arbitration in Thailand: Limiting Contract-based Claims While Maintaining Treaty-based isds](#) in INTERNATIONAL INVESTMENT TREATIES AND ARBITRATION ACROSS ASIA 115, 115-158 (Julien Chaisse & Luke Nottage eds., 2017).

(15) *Vietnam*

Lorraine de Germiny et al., [The EU-Vietnam Investment Protection Agreement Investor-State Dispute Settlement Mechanism in Perspective](#), 4 EILA Rev. 124 (2019).

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C. Regional Treaty Practice

(1) *Regional Comprehensive Economic Partnership (RCEP)*

RCEP is a free trade agreement between the Asia-Pacific nations of Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines,

Singapore, South Korea, Thailand, and Vietnam. It was signed in November 2020. It has no ISDS provisions.

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(2) *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*

CPTPP is a free trade agreement involving 11 countries in the Asia-Pacific region, including New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam. It was signed in March 2018. It includes ISDS provisions.

Scoop, [*Potential ISDS Problems Post Covid-19 \(June 29, 2020\)*](#).

Yuka Fukunaga, [*International Arbitration and Japan: Stagnant, but Signs of Change*](#), 112 *Am. Soc'y Int'l L. Proc.* 100, 102 (2018).

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José E. Alvarez, [*Is the Trans-Pacific Partnership's Investment Chapter the New 'Gold Standard'?*](#), 47 *Victoria U. Wellington L. Rev.* 503 (2016).

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V. Materials Issued by Regional Organisations

A. APEC

The [Asia-Pacific Economic Cooperation](#) (“APEC”) forum produces materials on international investment law reform, such as handbooks and working papers. APEC consists of 21 member economies, including the following Asian economies: Brunei, China, Hong Kong, Indonesia, Japan, Malaysia, Papua New Guinea, Philippines, Singapore, South Korea, Thailand, Taiwan and Vietnam.

These materials are primarily issued by the [Investment Expert’s Group](#) (“IEG”), which is a sub-forum under the [Committee of Trade and Investment](#) (“CTI”). In producing these materials, the IEG often collaborates with the [United Nations Conference for Trade and Development](#) Secretariat (“UNCTAD”). Other materials are produced by the APEC [Policy Support Unit](#) (“PSU”), the [APEC Secretariat](#), the [Economic Committee](#) and the [Human Resources Development Working Group](#) (“HRDWG”) of the [Senior Officials’ Meeting Steering Committee on Economic and Technical Cooperation](#).

(1) *Negotiating and entering into IIAs*

Materials designed to assist States in negotiating and entering into their international investment agreements (“IIAs”). These materials take the form of handbooks, research reports and reports on conferences.

N. Jansen Calamita, [Handbook on Obligations in International Investment Treaties](#) (APEC Committee on Trade and Investment, September 2020).

PSU, [Trends and Developments in Provisions and Outcomes of RTA/FTAs Implemented in 2018 by APEC Economies](#) (March 2020).

PSU, [Workshop on Trade and Investment Inter-dependencies in Global Value Chains \(GVCs\): Are Policy Frameworks for Trade and Investment, such as Trade and Investment Agreements keeping apace?](#) (November 2019).

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IEG & UNCTAD, [Transparency in International Investment Agreements](#), *APEC Committee on Trade and Investment: Investments Experts Group* (Jan 2012).

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IEG & UNCTAD, [Identifying Core Elements in Investment Agreements in the APEC Region](#), (December 2007).

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Walter Goode, [Negotiating Free Trade Agreements: A Guide](#) (December 2005).

Economic Committee, [Follow-up Study: Impact of APEC Investment, Liberalisation and Facilitation](#) (December 2005).

IEG & OECD, “[Working Together on Investment for Development](#)”, *APEC-OECD Investment Seminar*, Busan, Korea, 14-15 November 2005 (November 2005).

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IEG, [International Investment Instruments and their Legal Interpretations](#) (2003).

IEG, [APEC Workshop on Bilateral and Regional Investment Rules/Agreement](#), Merida, Mexico, 17-18 May 2002 (2002).

(2) *ISDS-related*

Materials relating to ISDS reform, both in general as well as on specific issues such as responding to investor complaints.

Akhmad Bayhaqi & Howard Mann, “[ISDS as an Instrument for Investment Promotion and Facilitation](#)”, APEC PSU, Policy Brief No. 28 (October 2019).

IEG, [Best Practices Guidebook: Capacity-Building to Ensure Appropriate and Prompt Consideration of Investors' to Improve the Investment Climate within APEC](#) (2015).

CTI, “Report on the Outcome and Proceedings”, [APEC-UNCTAD Workshop on Investor-State Dispute Settlement](#) (August 2011).

IEG, “Final Report”, [APEC-UNCTAD Workshop on Investor-State Dispute Settlement: Issues and Challenges for the APEC Region](#), Manila, Philippines, 9-11 December 2009 (February 2010).

(3) *Reform of domestic regimes and investment facilitation*

Reports analysing domestic investment regimes of its member States, covering issues such as investment facilitation.

PSU, [Facilitating Investment in APEC: Improving the Investment Climate through Good Governance](#) (November 2019).

IEG, “[Workshop on Sustainable and Inclusive Investment Policies within the APEC Region](#)”, Port Moresby, Papua New Guinea, 11-12 August 2018 (October 2018).

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IEG & UNCTAD, “[Best Practices in Investment for Development Case Studies in FDI - How to Integrate FDI in the Skills Development Process: Lessons from Canada and Singapore](#)”, *Investment Advisory Series* (June 2010).

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IEG, [Enhancing Investment Liberalisation and Facilitation in the Asia-Pacific Region \(Stage 1\): Reducing Barriers to Investment across APEC to Lift Growth and Lower Poverty](#) (November 2006).

IEG & UNCTAD, [APEC Investment Facilitation Initiative: A Cooperative Effort with United Nations Conference on Trade and Development \(UNCTAD\) and other Multilateral Institutions](#) (September 2005).

Economic Committee, [Benefits of Trade and Investment Liberalization and Facilitation](#) (December 2002).

APEC, [The APEC Region Trade and Investment 2002: Incorporating the Australian Supplement](#) (October 2002).

B. ADB

The [Asian Development Bank](#) (“**ADB**”) has 68 member States, 49 of which are from within Asia-Pacific. The ADB has offices and operations all across Asia. The ADB assists its members States and partners by providing loans, technical assistance, grants, and equity investments to promote social and economic development.

(1) *Negotiating and entering into IIAs*

Materials that make recommendations as to the nature and content of future IIAs.

GMS Secretariat, “[Overview of the Regional Investment Framework 2022](#)”, *Greater Mekong Subregion Economic Cooperation Program* (Ha Noi, Viet Nam, Mar 2018).

Shintaro Hamanaka, “[Trans-Pacific Partnership versus Regional Comprehensive Economic Partnership: Control of Membership and Agenda Setting](#)”, *Regional Economic Integration Working Papers* (January 2015).

Julien Chaisse & Shintaro Hamanaka, “[The Investment Version of the Asian Noodle Bowl: The Proliferation of International Investment Agreements](#)”, *ADB Working Paper Series on Regional Economic Integration* (Apr 2014), No. 128.

Gemma Estrada, Donghyun Park, Innwon Park & Soonchan Park, “[The PRC's Free Trade Agreements with ASEAN, Japan, and the Republic of Korea: A Comparative Analysis](#)”, *ADB Working Paper Series on Regional Economic Integration: No. 92* (January 2012).

(2) *Reform of domestic regimes*

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Bihong Huang, Zhuoxiang Yang & Yantuan Yu, “[Strategic Environmental Regulation and Inbound Foreign Direct Investment in the People's Republic of China](#)”, *ADB Working Paper Series*, Working Paper No: 1129 (May 2020).

ADB, [Rajasthan Investment Climate Assessment](#) (November 2015).

ADB, [International Investment Forum Proceedings: Georgia - Regional Hub and Asia's Gateway to Europe](#), Tbilisi, Georgia, 29–30 October 2014 (October 2014).

C. ASEAN

The [Association of South-East Asian Nations](#) (“ASEAN”) is an economic union comprising of 10 South-East Asian countries. ASEAN produces investment law reform materials pertaining to the region of South East Asia.

(1) *Reports on Inbound Investment Flows*

Annual reports on the current state of investments across ASEAN Member States.

ASEAN, [ASEAN at 50: A Historic Milestone for FDI and MNEs in ASEAN](#) (2017).

ASEAN, [ASEAN Investment Report 2019 FDI in Services: Focus on Health Care](#) (Nov 2019).

ASEAN, [ASEAN Investment Report 2018](#) (Nov 2018).

ASEAN, [ASEAN Investment Report 2017](#) (Nov 2017).

(2) *Investment Facilitation and Promotion*

Materials addressing how ASEAN Members facilitate or promote investments among themselves.

ASEAN, [2010 Guide to Investment Regimes of APEC Member Economies \(2nd Revision\)](#) (May 2011).

ASEAN, [Investment Opportunities in ASEAN 2021 - Invest in ASEAN: Towards Resilient Growth in the New Normal](#) (Dec 2020).

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(3) *Negotiating and entering into IIAs*

ASEAN, [*Establishing Multilateral Power Trade in ASEAN*](#) (Feb 2020).