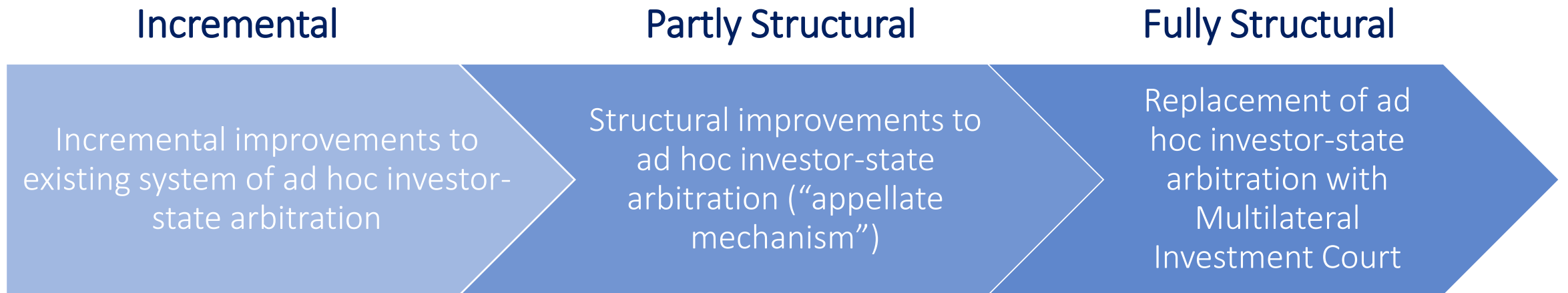


An Update on the Reform of Investment Arbitration

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Continuum of ISDS Reform Options in UNCITRAL



Advisory Centre: Statute

Membership



States and Regional Economic Integration Organisations (REIOs).

Services



Technical assistance and capacity-building on dispute resolution, incl. dispute prevention.

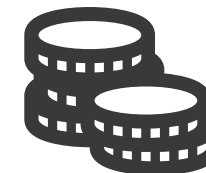
- Free for Members.
- At a fee and under conditions for non-Members and other entities (e.g., SMEs, NGOs).



Legal advice and support on ISDS proceedings, with priority access for LDC Members.

- For Members and non-Members (conditions).
- Provided at cost (not for profit). Fee scale based on level of economic development.

Financing



- Member dues (on scale).
- Fees for services.
- Voluntary contributions.

Procedural Rules Reform

Category A

- Draft provisions aimed to achieve harmonization of procedural ISDS rules.
- To align with the ICSID Arbitration Rules (2022).
- To be included as a “supplement” to the UNCITRAL Arbitration Rules.

e.g., evidence, early dismissal, security for costs, cost allocation

Category B

- Draft provisions building on existing procedural rules in recent treaties.
- To be developed as model treaty provisions for adoption by states.

e.g., state counterclaims, third-party funding, local remedies/waivers, shareholder claims, joint interpretations, NDSPs

Category C

- Draft provisions on (1) right to regulate and (2) calculation of compensation.
- To be developed as model treaty provisions for adoption by states.

Multilateral Investment Court and Appellate Mechanism

Very much a work in progress. Several structural questions remain open, including:

- Institutional structure and interaction between the first instance tier and the appellate tier.

e.g., two-tier court, standing first instance court + separate standing appellate mechanism, two-tier court with shared appellate mechanism?

- Flexibility to opt-in or opt-out of each of the tiers.
- Scope of jurisdiction. Exclusivity of jurisdiction.
- Grounds of appeal, scope of appeal, effects of appeal.
- Enforcement of judgments.

Multilateral Investment Court and Appellate Mechanism

Composition of a first instance investment court. What we know:

- **Roster model**
 - Equitable geographical representation. Representation of principal legal systems. Equal gender representation.
 - No nationality requirements – broader pool.
- **Nominations to roster**
 - Contracting Parties: Up to 4 individuals/Contracting Party, with “efforts” to consult domestically with relevant stakeholders (*e.g.*, judiciary, civil society, bar associations, business associations, academic organisations).
 - Possibility for nomination through an open call?

Status of Work

Reform element	Status
UNCITRAL Code of Conduct for Arbitrators	Adopted in 2023
UNCITRAL Code of Conduct for Judges	Adopted “in principle” in 2023
UNCITRAL Guidelines and Model Provisions on Mediation	Adopted in 2023
Advisory Centre on International Investment Dispute Resolution – Statute	<ul style="list-style-type: none"> • Adopted “in principle” in 2024 • Operationalisation pending
Draft toolkit on Dispute Prevention and Mitigation	<ul style="list-style-type: none"> • Evolving document • Nearing completion
Procedural rules reform and cross-cutting issues	Ongoing
Standing Multilateral Mechanism (Court) and Appellate Mechanism	Ongoing
Multilateral Instrument on ISDS Reform (framework convention)	Ongoing