## 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) 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.


(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, *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, *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.


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) 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


(1) Exhaustion of local remedies

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


(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.


(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 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.


(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.


**G. Third-party Funding**

Addressing proposals for full disclosure of third-party funding.


**H. The Other Issue (Separate written consent requirement)**

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

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.
(2) Documents

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

(3) Procedural Languages

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


(2) Acceptance of Appointment

Addressing possible reforms to the procedures to appoint arbitrators.


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 # 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.


2. **First Session.**

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


3. **Written Submissions and Observations**

Addressing the need to reform about written submission that parties should file.
(4) Case Management Conference

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


F. Evidence

(1) Evidence

Addressing the possible reforms about the Tribunals’ order and decision of admissibility and probative value of the evidence.
(2) Witnesses and Experts

Addressing the possible reforms for the procedure of the witnesses and experts.
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, *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 # 2 of March 15, 2019*, at 120. (Korea)


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

Addressing the merits of consolidating or coordinating arbitrations.


(4) Provisional Measures

Addressing the possible reform of the procedure of provisional measures.

H. Cost

(1) Payment and Decisions on Costs

Addressing the proposal for the procedure of payment and decisions on costs.
(2) Security for Costs

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


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, *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, *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.


**L. Expedited Arbitration**

Addressing the need about the opting out of expedited arbitration.


**M. Others**


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).


Thailand Model BIT (2002).


Sri Lanka Model BIT (no known date).

Cambodia Model BIT (no known date).

Indonesia Model BIT (no known date).


**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.


### B. Individual Asian Country Treaty

#### (1) Australia


AFTINET, *UN study shows more governments rejecting or limiting foreign investor-rights to sue governments (ISDS) (June 12, 2019)*.


(2) Brunei


(3) Cambodia


(4) China


(5) **Indonesia**

Yas, *Four key points from the ratification of the Indonesia-Singapore bilateral investment treaty (December 3, 2021).*


(6) **Japan**

The Japan Times, *Japan and UK may forgo dispute settlement system in trade deal (July 28 2020).*


(7) **Korea**

AFTINET, *South Korean Prime Minister considers abolishing ISDS (July 16, 2019).*


Naomi Bar, *Seoul prefers ISDS for its investment chapter but could consider ICS (June 16, 2016).*

Occupy FTA, *Korean Supreme Court Opposing ISDS in KorUS FTA (August 2, 2016).*

Korea Herald, *Government criticized for lack of transparency on ISDS suit (May 25, 2015).*


(8) Laos


(9) Malaysia

(10) **Myanmar**


(11) **New Zealand**


Sam Sachdeva, *NZ ambassadors pushing for ISDS change (November 3, 2017).*

Rob Howse, *The "Ardern Clause" in TPP: A Novel Approach to Curbing Investor-State Dispute Settlement (November 11, 2017).*


Audrey Young, *New Zealand open to ditching old ISDS model under NZ - EU trade deal (October 29, 2015).*

(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**


(15) **Vietnam**


**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.


Patricia Ranald, *Suddenly, the world’s biggest trade agreement won’t allow corporations to sue governments (September 16, 2019)*.


Indonesia, PAPER: THE IMPORTANCE OF PRUDENTIAL MEASURES ELEMENT IN RCEP AGREEMENT AND THE CROSS CUTTING ISSUES BETWEEN SERVICES AND INVESTMENT CHAPTER (August 2015).

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

CPTPP is a free trade agreement 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).*


Voxy, *Select committee urged to stop the spread of ISDS under CPTPP (August 14, 2018).*


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.


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).


IEG & UNCTAD, “APEC-UNCTAD Regional Training Course on the Core Elements of International Investment Agreements in the APEC Region”, *APEC Committee on Trade and Investment: Investments Experts Group* (July 2009).


IEG & UNCTAD, *Identifying Core Elements in Investment Agreements in the APEC Region*, (December 2007).
IEG, “Report by the IEG and GOS Convenors”, *Workshop on the Relationship between Investment and Trade in Services in Regional Trade Agreements (RTAs) and Other International Investment Agreements*, 18 April 2007 (July 2007).


(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).


(3) Reform of domestic regimes and investment facilitation

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


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


PSU, *Key Trends and Developments relating to Trade and Investment Measures and their Impact on the APEC Region* (November 2014).

PSU, *Key Trends and Developments relating to Trade and Investment Measures and their Impact on the APEC Region* (May 2014).

PSU, *IFAP Implementation in Facilitating Investment for the Asia Pacific Region* (April 2013).


PSU, *Key Trends and Developments relating to Trade and Investment Measures and their Impact on the APEC Region* (Sept 2012).


PSU, *Key Trends and Developments Relating to Trade and Investment Measures and Their Impact on the APEC Region* (Nov 2011).


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).


Economic Committee, *Benefits of Trade and Investment Liberalization and Facilitation* (December 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).


(2) **Reform of domestic regimes**

Materials relating to the reform of the domestic legal regimes for foreign investment.


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).

(2) Investment Facilitation and Promotion

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


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

ASEAN, ASEAN Comprehensive Investment Agreement: A Guidebook for Businesses and Investors (Dec 2015).
(3) Negotiating and entering into IIAs

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