THE CODE OF CONDUCT FOR ARBITRATORS IN INTERNATIONAL DISPUTE RESOLUTION

THE INAUGURAL STEP IN ISDS REFORM

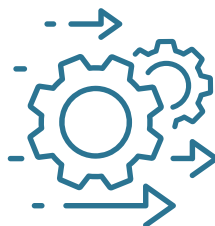**Authored by: Anna Korshunova (Associate) - LALIVE**

In July 2023, during its 56th annual session in Vienna, the United Nations Commission on International Trade Law ("UNCITRAL") adopted the Code of Conduct for Arbitrators in International Dispute Resolution (the "Code").

Background

The inception of the Code traces back to 2017. It emerged from the focus of the UNCITRAL Working Group III on investor-State dispute settlement ("ISDS") reform aimed at addressing mounting criticism of the system. Recognised as the inaugural stride in the ISDS reform agenda, the Code epitomises the potential of Working Group III to spearhead transformative reforms within the ISDS domain.

The Code is a collaborative work product of the Secretariats of the International Centre for Settlement of Investment Disputes ("ICSID") and UNCITRAL. They based the text on a thorough analysis of standards from codes of conduct in investment treaties, arbitration rules, and rules of international courts and tribunals. The drafters shared multiple versions for review and incorporated feedback from State delegates and various stakeholders made publicly available on ICSID and UNCITRAL official platforms.

Application & Enforcement

The Code regulates the conduct of arbitrators in investor-State disputes and can be rendered binding in several ways:

(1) Incorporation through a multilateral instrument on ISDS reform, which States are currently considering as a potential path forward;

(2) Incorporation in investment treaties or other instruments of consent (domestic laws, investment contracts);

(3) Case-by-case agreement of the parties;

(4) Incorporation in procedural rules and adjudicators' declarations, e.g. by amending ICSID and UNCITRAL Rules.

ICSID has already declared its intention to ensure the Code's harmonious integration within ICSID's operational framework.

During the drafting, it was indicated that the Code should include sanctions for non-compliance that would be sufficiently strict to have a deterrent effect. Yet, the final text does not expressly stipulate any such sanctions. Instead, it emphasises self-regulation, urging arbitrators to step down if they are unable to comply with the Code.