



REFERENCING THE INVESTMENT SUPPORT PROGRAMME FOR THE LEAST DEVELOPED COUNTRIES (ISP/LDCs) IN THE DRAFT DOHA PROGRAMME OF ACTION FOR LDCs

Submission by the International Development Law Organization (IDLO)

1. **IDLO welcomes the approaches that appear to be guiding intergovernmental preparations for the forthcoming Doha Conference**, particularly emphasis on enhancing effectiveness and impact in the implementation of existing mandates, special attention to innovation and results, and a call for the mobilization of all stakeholders in support of the LDCs especially in their effort towards a sustainable recovery from the COVID 19 pandemic.
2. **In this perspective, we trust that it will prove possible in the next iteration of the Zero Draft of the Doha Programme of Action for the LDCs to correct the omission of a reference to the achievements of the Investment Support Program for the Least Developed Countries, (ISP-/LDCs)**, in line with recent UN deliberations and conclusions, and of recommendations on its future evolution.

MAIN FEATURES OF ISP/LDCs

3. **ISP/LDCs** – designed by the OHRLLS in cooperation with IDLO and with the support of the Italian government and being implemented by IDLO, an intergovernmental organization with Observer Status in the UN General Assembly – became fully operational in 2019, thanks to a generous contribution by the European Commission.¹ **It fully reflects in its conception and modalities of execution the criteria of responsiveness, results orientation, innovation, and multi-stakeholder engagement that are orienting the elaboration of the Doha Program of Action** as outlined above.
4. **ISP/LDCs is guided by a Steering Committee –comprising, in addition to OHRLLS, eminent experts from the LDCs, including at present the Permanent Representative of Malawi to the United Nations and Chair of the LDCs Group and the Permanent Representatives to the United Nations of Tanzania and Uganda; an official of the European Commission and the Deputy Permanent Representative of Italy to the United Nations on behalf of the donor community; and other senior experts and practitioners from Asia, Europe, the United States and Canada.**
5. **ISP/LDCs provides support to LDCs, at no cost, in connection with both on a wide range of investment-related matters, including investment-related negotiations² ~~(3)~~ and investment-**

¹ Further information on ISP/LDCs is available at <https://www.idlo.int/Investment-Support-Programme-LDCs>. For the French version, please see: <https://www.idlo.int/Investment-Support-Programme-LDCs-fr>.

² Examples of negotiation support available under ISP/LDCs include: (i) reviewing the feasibility of a proposed investment project between the beneficiary and a potential foreign investor and conducting other related assessments and evaluations; (ii) preparing contract negotiation positions; (iii) preparing tender documents and managing tendering processes (where contracts are to be awarded through a competitive process); (iv) preparing financial structures for the operation and management of a proposed project; (v) drafting and negotiating contractual provisions; (vi) selecting the dispute settlement method, which may include arbitration of disputes before an institution or ad hoc, depending on the nature of the project, as well as the applicable law and place and seat of arbitration; (vii) preparing a monitoring system to ensure contract compliance and avoidance of disputes; and (viii) preparing and conducting



~~related dispute settlement.~~³ ~~It does so by-~~⁽²⁾ relying on the services of an extensive roster of law firms, professional associations, universities, and research centers that are committed to collaborate with the Programme and **provide services on a pro-bono or reduced fee basis**. All assistance under the Programme is demand driven, extended upon request, and designed for quick response. ~~All expenses are borne by the Programme and provided at no cost to the beneficiary.~~⁽³⁾

6. **As a public/private partnership exclusively dedicated to LDC beneficiaries, ISP/LDCs embodies several distinctive, innovative features. First, the Programme adopts an integrated approach to LDCs's capacity development: it pairs the ability to provide quality professional advice across investment negotiation and disputes settlement processes to help LDC beneficiaries assess options, decide upon their interests, priorities and strategies and weigh tradeoffs that may be involved when policy goals conflict, with responsiveness to requests for related capacity building tailored to the situation and demand of each country. Secondly, the Programme places the private sector at the center of both the supply and the demand sides of investment capacity development: it not only relies on the participation and commitment of firms and individuals on the Programme's experts' roster but also envisages that under-resourced small and medium enterprises in LDCs, may also receive, along with governments, investment-related support from the Programme, thereby contributing to private sector development based on the principles of social inclusion and economic sustainability as set forth in the 2030 Agenda.**
7. **In the short timeframe since it became operational, the Programme has already delivered investment-related technical support to a wide range of LDCs. In the arbitration area, ISP/LDCs has supported the defense of the Government of The Gambia in an investor-state arbitration with a foreign investor.** The contribution provided by ~~IDSP/ISP~~ISP/LDCs was fundamental to the settlement of the dispute, with the foreign investor relinquishing its claims and The Gambia able to retain financial resources to advance its development efforts. **Since then, the Programme has expanded its portfolio and is currently providing investment related support and complementary capacity building in Malawi, Liberia, and Ethiopia with new entry points for technical support being discussed with-in** Uganda, Mozambique and LDCs in the Pacific.
8. Pursuant to a recommendation of the Steering Committee, an official side event, opened by the President of ECOSOC and engaging the Director General of IDLO as the Committee Chair, the High Representative for the LDCs, LLDCs and SIDS and the whole of the Committee membership was held during the last session of ECOSOC Finance for Development Forum.

negotiations on Bilateral Investment Treaties or other investment related agreements and strengthening the capacity of beneficiary officials active in this field.

³ Examples of dispute settlement-related support available under ISP/LDCs include: (i) advising and/or representing the beneficiary in existing or potential arbitration, mediation or negotiation proceedings between the beneficiary and an investor, and in the enforcement (or challenge) of an award; (ii) selecting arbitrators; (iii) preparing submissions; (iv) attending arbitration hearings; and (v) preparing and examining evidence.



REFERENCING ISP/LDCs IN THE DOHA PROGRAMME OF ACTION

9. **The most appropriate context to introduce a reference to ISP/LDCs in the next iteration of the Zero Draft would seem to be the section on "Foreign Direct Investment", Target "adopt and implement investment promotion regimes for LDCs" and in particular paragraph 262 of the Zero Draft that begins with a reference to relevant decisions of the 'Addis Ababa Action Agenda'.**
10. **This is indeed the context in which ISP/LDCs was launched.** The basic program document, in describing the background and objectives of the Programme, recalls that:

At the Third International Conference on Financing for Development, world leaders stated: "We note with concern that many least developed countries continue to be largely sidelined by foreign direct investment that could help to diversify their economies, despite improvements in their investment climates. We resolve to adopt and implement investment promotion regimes for least developed countries". They specifically pledged to: "offer financial and technical support for project preparation and contract negotiation, advisory support in investment-related dispute resolution, ... as requested by the least developed countries". The offer was welcomed by development partners in the Political Declaration adopted at the mid-term review of the IPoA. More broadly the instrumental role of FDI for the realization of the Sustainable Development Goals (SDGs) is recognized, including specifically in target 10b. The IPoA also stresses the importance of private sector development to increase investment in the LDCs and calls for the provision of enhanced technical support to the private sector (paragraph 55.2(a) and (b)).

The ISP/LDCs aims to contribute to the realization of these objectives, within the framework of Agenda 2030, for the benefit of the LDCs, with a specific focus on assistance to investment-related matters including negotiations and dispute resolution.

11. **This is also the context in which the Ministerial Declaration adopted by the Ministerial Meeting of the LDCs in September 2018 (A/73/455) referred to ISP/LDCs in paragraph 31:**

...We welcome the decision contained in the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development to adopt and implement investment promotion regimes for least developed countries and the offer to provide financial and technical support for project preparation and contract negotiation, advisory support in investment-related dispute resolution, access to information on investment facilities and risk insurance and guarantees, such as through the Multilateral Investment Guarantee Agency. In this regard, we take note with appreciation of the initiatives undertaken by UN-OHRLLS aiming at providing legal and technical support to LDCs in investment-related negotiations and dispute settlement through the Investment Support Programme, implemented by the International Development Law Organization (IDLO) and at improving the capacity of the investment promotion agencies of LDCs to attract, diversify and retain



FDI and derive maximum benefit from it. We commend EU for its pledge to contribute 1 million Euro for the implementation of the Investment Support Programme and invite donors to make generous contribution to these initiatives.

12. **On this basis**, and summarizing references to ISP/LDCs in the Secretary General's reports on 'Implementation of the Istanbul Programme of Action (see for example paragraph 85 of document A/73/80_E/2018/58), **paragraph 262 of the Zero Draft might be amended as follows (the proposed changes are in RED):**

262. We commit **to complete** by 2023 **the process of** implementing the decision contained in the Addis Ababa Action Agenda to adopt and implement investment promotion regimes for the LDCs. We **reiterate** the offer in the Action Agenda to provide financial and technical support for project preparation and contract negotiation, advisory support in investment-related dispute resolution, access to information on investment facilities and risk-insurance and guarantees such as through the Multilateral Investment Guarantee Agency. **We welcome in this regard the establishment of the Investment Support Program for Least Developed Countries (ISP/LDCs), implemented by the International Development Law Organization (IDLO) and aimed at providing legal and technical support to LDCs ~~in~~ on investment-related matters, including negotiations and dispute settlement. We commit to promote a further strengthening of this Program, invite donors to continue supporting it, and encourage LDCs to make wide use of the Program's facilities.** We request the Secretary General to submit to the General Assembly a comprehensive report on the implementation of the investment promotion regimes for LDCs for consideration and action by the Assembly in 2022.

13. We also concur with other comments submitted with regard to the Zero Draft on the importance of avoiding overlap and duplication particularly in relation to programs and institutional arrangements exclusively dedicated to LDCs.