# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Introduction</td>
<td>3-6</td>
</tr>
<tr>
<td>2 The Programme</td>
<td>7-12</td>
</tr>
<tr>
<td>3 Funding</td>
<td>13-14</td>
</tr>
</tbody>
</table>
Chapter

Introduction
Needs for Support for LDCs

FDI has potential to help LDCs—create new jobs, integrate local firms, bring new technology, contribute to poverty eradication, and achieve sustainable development.

• U.N. Programme of Action for LDCs for Decade 2011-2020 (IPoA):
  “Support capacity-building in least developed countries, and at the regional level, as appropriate, aimed at improving their abilities to attract foreign direct investment, including the ability to negotiate mutually beneficial investment agreements.” (Paragraph 122.3.b).

  World leaders 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.”
  (further supported by development partners in the political declaration in Antalya, May 2016).
Sounds Good—What is the Problem?

LDCs need assistance on investment-related negotiations and dispute settlement on short notice:

- Financial constraints and need (neutral) assistance.
- Failure to get adequate human and financial assistance may result in substantial asymmetries: need for multi-disciplinary teams.
- Contracts may last for several decades and, therefore, LDCs maybe stuck by the consequences.
- In event of disputes, LDCs may not have expertise to defend themselves as respondents in investor-state arbitrations.

Therefore, need to establish a Comprehensive Investment Support Programme for LDCs to provide on short notice expert multidisciplinary assistance to governments of LDCs (and under-resourced LDC firms) with the aim of helping in investment-related negotiations and dispute settlement.
# The Expert

<table>
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<tr>
<th>Need for Experts</th>
<th>Risks with Experts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experts can provide specialized knowledge in technical areas</td>
<td>Experts can be very expensive (Short-term expertise may be costlier and may lack specialized cultural knowledge)</td>
</tr>
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<td>Experts can help mitigate potential harms or losses that are likely to occur</td>
<td>In disputes, LDCs have to move very quickly as respondents and therefore time is of the essence</td>
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<tr>
<td>Experts can help develop capacity in LDCs</td>
<td>Experts interests may not align with LDCs (personal interest and may not be interested in capacity building)</td>
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</tbody>
</table>
Chapter

The Investment Support Programme
The Programme

• The Programme seeks to provide multidisciplinary teams on short notice to assist with investment-related activities and investment-related disputes.

• The Programme will be implemented by the International Development Law Organization (IDLO), an intergovernmental organization with a treaty based mandate to work in the areas covered by the Programme, with the support and collaboration of UN-OHRLLS.

• The Programme will have a light institutional structure and small staff.

• Effort will be made to avoid duplication and ensure complementarities with existing initiatives that may already provide assistance to the LDCs in the areas covered by the Programme.

• IDLO will establish collaborative arrangements and partnerships with relevant national and international partners (e.g., law firms, professional partnerships, consultancies, bar associations, law societies, professional associations, university faculties, research centres, non-governmental organizations).
Who can apply?

LDC Governments and certain eligible private sector entities

What private sector entities may apply:
(i) Small/Medium sized enterprises that are defined under national legislation
(ii) Entities that are fully-owned by the state or if partially-owned if foreign interest is less than 25%.
(iii) Entities that may be deemed eligible following a checklist proposed in the Programme:
  • Entity engaged in economic activity
  • Not under foreign direction or control
  • Employ fewer than 50 persons
  • Balance sheet less than USD5 million
How does an Expert Get Listed?

**Selection Process:**
1. Guideline Criteria
2. Documentation

**Application Process:**
- Applicant
- Applicant
- Applicant
Role of the Private Sector as Experts

Need for wide range of experts with legal and other technical expertise.

- **Experts**
  - **Individuals** (in the roster)
  - **Institutions** (ad hoc basis or through MoU)

- **Gratis**
- **Reduced Fee**
How will the Programme Work?

The core guiding principle is to act in the best interest of the client

- Request from prospective Client to IDLO
- IDLO checks eligibility of Client and discusses the requested Scope of Work with Client: up to 10 working days
- IDLO checks for existing initiatives that could address Scope of work, so as to avoid duplication
- IDLO selects Expert or Support Team: up to 10 working days
- IDLO discusses prospective Scope of Work with Client and Expert(s): up to 10 working days
- IDLO, Expert(s), and Client sign the Engagement Agreement: up to 5 working days
- Assistance activities start; IDLO starts monitoring and administrative support

In case of need, IDLO consults a committee of independent experts
Chapter
Funding
Funding

- Programme is to be funded through voluntary contributions to a general, multi-donor IDLO trust fund.
- Experts shall typically work on a pro bono basis but otherwise on a reduced-fee bases (daily rate not to exceed USD375).
- The average allotment for support is estimated at USD78,500 per request.
- The two year budget is estimated at around 2 million USD, to cover travel costs for the experts and admin costs for the programme.
- We hope we can count on support from UN member states, donor agencies, other interested organizations, etc.
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