Annex 1. Methodology and coverage of the AMD indicators (100 economies across 7 regions)

The Arbitrating and Mediating Disputes (AMD) indicators were developed using data gathered about alternative dispute resolution laws, regulations, and practice relevant for FDI through a standard questionnaire of arbitration, mediation and conciliation experts in 100 economies, including lawyers, law professors, arbitrators, members of arbitration and mediation institutions, and government regulators, on a pro-bono basis. The questionnaire was distributed in late 2011, with responses received through mid-2012. The questionnaire was partly based on standard case studies so that responses can be comparable across economies. The responses were reviewed and harmonized and supplemented with desk research.

TABLE A1: Coverage of the AMD indicators: 100 economies across 7 regions

Region	Economies
East Asia and the Pacific 11 economies	Brunei Darussalam; Cambodia; Hong Kong SAR, China; Indonesia; Malaysia; Papua New Guinea; Philippines; Singapore; Taiwan, China; Thailand; Vietnam
Eastern Europe and Central Asia 21 economies	Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Georgia; Kazakhstan; Kosovo; Kyrgyz Republic; Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Turkey; Ukraine
Latin America & the Caribbean 15 economies	Argentina; Bolivia; Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; Guatemala; Haiti; Honduras; Mexico; Nicaragua; Peru; Venezuela, R.B.
Middle East and North Africa 8 economies	Algeria; Egypt, Arab Rep.; Iraq; Jordan; Morocco; Saudi Arabia; Tunisia; Yemen, Rep.
High Income OECD 17 economies	Australia; Austria; Canada; Czech Republic; France; Germany; Greece; Ireland; Italy; Japan; Korea, Rep.; Netherlands; New Zealand; Slovak Republic; Spain; United Kingdom; United States
South Asia 6 economies	Afghanistan; Bangladesh; India; Nepal; Pakistan; Sri Lanka
Sub-Saharan Africa 22 economies	Angola; Burkina Faso; Burundi; Cameroon; Chad; Congo, Dem. Rep.; Cote d'Ivoire; Ethiopia; Ghana; Kenya; Madagascar; Mali; Mauritius; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; South Africa; Tanzania; Uganda; Zambia

Source: FDI Regulations database, 2012.

General presentation of the methodology

The AMD indicators quantify three aspects of ADR regimes that are important for companies seeking to resolve commercial disputes outside of domestic courts. These factors are the strength of an economy's commercial arbitration laws (including adherence to international conventions on commercial arbitration); the ease of process for the parties initiating and conducting arbitration proceedings in that economy; and the extent to which domestic courts assist the arbitration process, both during the proceedings and regarding the enforcement of foreign arbitral awards. These three factors also measure, to a certain extent, other elements of alternative dispute resolution (ADR), that is to say mediation and conciliation. These elements are considered essential to the operation of an effective arbitration regime that prioritizes predictability, transparency, efficiency, due process and party autonomy.

These indicators look exclusively at commercial arbitration—originating from the agreement of the parties—and do not cover investment arbitration. They look at all types of commercial arbitration involving all kinds of parties, whether private, state, or state entities involved in commercial relationships with private parties. It also examines a variety of arbitration cases, whether administered by private arbitration institutions, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) or ad hoc arbitrations.

There are two types of questions asked in the Arbitrating and Mediating Disputes indicators:

- Legal questions, measuring the quality of laws and regulations applicable to foreign-owned companies in the respective economy. Responses to these survey questions are based on the provisions of the laws, regulations and judicial precedents, if applicable. These questions are therefore *de jure,* meaning that they measure what the law states.
- Procedural questions, measuring the duration and difficulty of arbitration related procedures. Responses to these survey questions are based on the contributors' practical experience. These questions are *de facto,* meaning that they measure what exists in fact, or in other words, practice on the ground.

This Annex presents a brief overview of the AMD indicators' methodology. A complete methodology with question details for each sub-indicator is available from the author upon request.

Presentation of the methodology for the AMD indicators

There are three sets of indicators, providing comprehensive information and analysis on ADR in the surveyed economies:

1. AMD indicators on the strength of laws and institutions (AMD 1)

2. AMD indicators on the ease of initiating and conducting arbitration proceedings (AMD 2)
3. AMD indicators on the ease of recognition and enforcement of foreign arbitral awards (AMD 3).

The first set of indicators, AMD 1, measures the strength of ADR laws and institutions, covering and including:

1. The domestic laws and regulations on ADR, their accessibility, and whether or not, according to contributors, they follow the United Nations Commission on International Trade Law ("UNCITRAL") Model Laws on International Commercial Arbitration and on International Commercial Conciliation that states have the possibility to incorporate in their domestic legislation; it also covers the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention);
2. Data on ADR private institutions, whether they exist in the surveyed economies and follow specific rules, such as the UNCITRAL Arbitration Rules of 1976, revised in 2010;
3. Reporting on the specific ADR services available, such as fast-track or online arbitration.

AMD 1 compares the strength of economies' ADR regimes by examining the laws and regulations that an economy relies on to regulate its domestic and international arbitrations, as well the economy's adherence to specific international conventions. Specifically, AMD 1 focuses on:

(a) What laws on alternative dispute resolution are in place, whether different laws apply to domestic and international arbitrations taking place in that economy, and whether the economy has entered into leading international conventions on arbitration, specifically the New York Convention;

(b) Whether the economy hosts arbitration and mediation institutions, and if yes, what is their structure, and if they offer specific services such as fast-track or online arbitration.

The second set of indicators, AMD 2, looks at the ease of process, before and after initiating arbitration proceedings:

1. Before initiating arbitration proceedings, it measures whether or not an arbitration agreement can be easily concluded, and whether or not the economy surveyed allows for a distinction between domestic and international arbitration;
2. It also looks at possible restrictions that parties may face when appointing their arbitrators and counsels, and when conducting the arbitral process, for instance, freedom to choose the language of the proceedings or the arbitrating institution. In addition, it measures the ease of process once arbitration proceedings are initiated, and through a standard case study, the usual length of arbitration proceedings;
3. It captures judicial assistance during arbitration proceedings: whether domestic courts are willing to enforce an arbitration agreement by recognizing that they do not have jurisdiction, and whether there are other measures they could offer in support of arbitration proceedings.

AMD 2 compares the ease of parties to design arbitration proceedings in their chosen manner and conduct fair and predictable arbitrations in the economy that respect due process. Specifically, it looks at several concepts:

(a) Form of the arbitration agreement: whether the law restricts the form that an arbitration agreement can take in order to be legally binding on the parties;

(b) Arbitrability: whether the law restricts the subject matter of commercial disputes being submitted to arbitration;

(c) Party autonomy: this is an essential value underpinning arbitration as a dispute resolution tool, and laws may enshrine it by providing parties with the freedom to select integral elements of the arbitration process including, any seat of arbitration, any particular ADR institution, any arbitrators and foreign counsel;

(d) Judicial assistance: how domestic courts assist the arbitral process; whether domestic courts support arbitration and have articulated a "pro-arbitration" policy, as well as upholding the parties' agreement that the arbitration tribunal can rule on its own jurisdiction, whether the law expressly provides for courts to assist the arbitration process by ordering interim relief, the production of documents and the appearance of witnesses;

(e) Practice: practitioners' estimates regarding the average period of time to establish an arbitral tribunal in the economy's most used arbitration institution.

The third set of indicators, AMD 3, deals with judicial assistance in recognizing and enforcing foreign arbitral awards:

1. All steps of the recognition and enforcement process are measured, whether or not there are specialized courts and to what extent these courts review the arbitral award;
2. Through a standard case study (Box 3), the length of the usual recognition and enforcement proceedings for foreign arbitral awards is established.

AMD 3 compares the ease of the recognition and enforcement of foreign arbitral awards across economies. It includes:

(a) *De jure* and *de facto* questions relating to how domestic courts assist parties in the recognition and enforcement process of a foreign arbitral awards;

(b) Practice: practitioners' estimates regarding the average period of time to enforce an arbitral award in a local court of the surveyed economy.

The case studies used to measure the length of arbitration proceedings and the length of the recognition and enforcement of foreign arbitral awards is standard. In both cases, contributors are asked to give an estimate where a hypothetical party is in breach of a supply agreement and the other party seeks to recover US$100,000 through arbitration, either by initiating arbitration proceedings or by initiating recognition and enforcement proceedings concerning a foreign arbitral award rendered in the same amount.

Limitations of the AMD indicators

The methodology of Arbitrating Disputes indicators is primarily limited to analyzing verifiable data, such as the legal framework and most common practices in each economy. The survey uses a specific methodology that consists of mostly "Yes" or "No" questions and has few perception-based questions. Practice is therefore covered in a limited manner, given the survey methodology and the nature of arbitration, which is private and confidential.

There is no such thing as a "one size fits all" arbitration regime. However, by asking a standardized set of questions in our survey, we aim to identify good practices that can assist countries in benchmarking the quality of their arbitration regimes.

The AMD indicators represent a rather extensive measurement of economies' alternative dispute resolution frameworks with a focus on commercial arbitration. However, the indicators do not cover many other issues related to dispute resolution such as:

1. Evaluation of arbitration clauses in bilateral investment treaties, investment chapters of free trade agreements, investment treaty arbitrations and enforcement of ICSID arbitration awards;
2. Level of awareness and acceptance of arbitration practices by the economies' legal and business community;
3. Level of training of economies' arbitration practitioners and judges;
4. Effectiveness of arbitral institutions;
5. Extent to which arbitration is preferred over other dispute resolution tools in each economy;
6. Effectiveness of commercial litigation (already measured by the World Bank Group's Doing Business Enforcing Contracts indicator).

Glossary of terms

- **Alternative Dispute Resolution (ADR)** – Specific procedures for settling disputes by means other than court litigation. These methods include among others mediation, conciliation and arbitration.
- **Arbitrability** – Whether the claim could be subject to arbitration. Certain categories of claims are considered as being incapable of resolution by arbitration and deemed "non – arbitrable" because of their perceived public importance.
- **Arbitration** – ADR method, by which parties agree to submit their dispute to an independent and impartial arbitrator or arbitral tribunal appointed by mutual consent or statutory provision and to issue a final and binding arbitral award.
- **Arbitration Agreement** – An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship.
- **Commercial** has the meaning ascribed to it in the 1985 UNCITRAL Model Law on International Commercial Arbitration. A note to the text of the Model Law states: "The term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. […]"
- **Conciliation** – The term "conciliation" is used as a broad notion encompassing mediation, and refers to ADR proceedings in which a person or a panel of persons assists the parties in their attempt to reach an amicable settlement of their dispute.
- **Enforcement of an Arbitral Award** – The conversion of the arbitral award into a court judgment with all the sanctions that a court judgment entails, such as the right to have the debtor's assets seized.
- **Fast-track Arbitration** – Time bound arbitration, which does not differ from traditional arbitration except that the parties or the arbitrator(s) have to observe specific time limits.
- **Foreign Arbitral Award** – Foreign arbitral award has the meaning ascribed to it in the New York Convention. It is an arbitral award rendered outside of your state in arbitration proceedings conducted outside of your state (and, if applicable, awards issued in your country through international arbitration proceedings).
- **Interim Measures** – Temporary measures issued by courts or arbitral tribunals to prevent immediate and irreparable injury (e.g., sequestration of property, attachment of bank accounts, and preservation of evidence).
- **Mediation** – ADR method, by which a structured and interest-focused process enables the parties, with the facilitation of one or more mediators, to agree on the resolution of their dispute.
- **New York Convention** or **Convention on the Recognition and Enforcement of Foreign Arbitral Awards** – Signed in

1958 and entered into force in 1959, the Convention requires national courts to recognize and enforce foreign arbitral awards and recognize the validity of arbitration agreements. It also require national courts to refer parties to arbitration when they have entered into a valid agreement to arbitrate that is subject to the Convention.

- **Seat of Arbitration** – The location of the arbitration forum. The seat of arbitration has a number of significant effects upon the arbitration, including the potential of national court interference with arbitration proceedings, national court's assistance with arbitration proceedings, the law applicable to the arbitration agreement if the parties have not agreed otherwise, and national court's enforcement of arbitral awards.
- **Severable** – The severability or separability doctrine provides that an arbitration agreement, even though included in and related closely to an underlying commercial contract, is a separate and autonomous agreement.
- **UNCITRAL Model Law on International Commercial Arbitration** – Adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and amended in 2006, the Model Law aims at harmonizing national laws on international commercial arbitration. States may incorporate it into their domestic legislation.
- **UNCITRAL Model Law on International Commercial Conciliation** – Adopted by UNCITRAL in 2002, the Model Law aims at harmonizing national laws on international commercial conciliation.