**FOR EPDP TEAM CONSIDERATION: AMENDMENTS & UPDATES TO PRELIMINARY RECOMMENDATIONS #6**

**Discussion Draft as of 9 November 2021**

**Recommendation #6: Applicable Law in an Arbitration Proceeding**

1. Any arbitration will be conducted in accordance with the law as mutually agreed to by the parties.

*\*\* Note: The square bracketed text below describes two alternatives under consideration by the EPDP team, to apply in situations where the parties cannot agree on the applicable law:*

**[OPTION 1:**

Where the parties cannot reach mutual agreement, the arbitration will be conducted in accordance with the law of the relevant registrar’s principal office or where the respondent is resident at the election of the IGO Complainant.]

**[OPTION 2**:

Where the parties cannot reach mutual agreement, the arbitral tribunal shall determine the applicable law.]

1. [**POSSIBLE ADDITIONAL STEP UNDER CONSIDERATION**: If either party raises concerns to the arbitral tribunal about applying the law of the registrar’s principal office or the respondent’s place of residence, e.g., because it does not have a satisfactory cause of action related to the parties’ dispute, the arbitral tribunal may request submissions from the parties as to the suggested applicable law or principles of law (which may include UDRP case precedent) to be applied.]

PROPOSAL:

1. [MAINTAIN SAME TEXT] Any arbitration will be conducted in accordance with the law as mutually agreed to by the parties.
2. [NEW OPTION 1] Where the parties cannot reach mutual agreement, the IGO Complainant shall elect the law either of the relevant registrar’s principal office or where the respondent is habitually resident. Where the IGO Complainant declines to make an election on the ground that neither law provides for a cause of action in the matter, the arbitral tribunal shall consider submissions from both parties in making a decision on the IGO Complainant’s assertion. If the arbitral tribunal finds that neither the law of the relevant registrar’s principal office or that of the respondent’s habitual place of residence is applicable to the current proceedings as they do not provide for a cause of action, the arbitral tribunal shall apply the relevant law in accordance with the arbitral rules governing the arbitration proceeding.

[NEW OPTION TWO] Where the parties cannot reach mutual agreement, the arbitral tribunal shall apply the relevant law in accordance with the arbitral rules governing the arbitration proceeding.