



ICSID

**International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

Overview of Investment Treaty Clauses on Mediation

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1 Purpose of Document

ICSID supports efforts by parties to resolve investment disputes, including through mediation. It provides its facilities and administrative services, with a dedicated staff team to assist the parties and the mediator(s) throughout the process. ICSID's administrative assistance may include identifying qualified mediators, facilitating communication between the parties and the mediator, handling all aspects related to the organization of joint or separate mediation sessions, and managing the finances of the process.

To better facilitate investor-state mediation, ICSID began work on a new set of mediation rules in 2018. Once approved by ICSID Member States, the ICSID Mediation Rules will be the first institutional mediation rules designed specifically for investment disputes. The ICSID Mediation Rules will complement ICSID's existing rules for arbitration, conciliation and fact-finding, and may be used either independently of, or in conjunction with, arbitration, conciliation or fact-finding proceedings. Their availability will assist Member States to implement their international investment agreement provisions offering investment mediation.

This document reviews current treaty provisions addressing investor-state mediation and other amicable dispute resolution mechanisms. ICSID has provided the results of its review to UNCITRAL Working Group III on Investor-State Dispute Settlement Reform.

2 Introduction

ICSID has conducted an extensive survey of existing dispute resolution clauses in bilateral investment treaties (BITs), free trade agreements (FTAs) and other treaties, and dispute settlement provisions in model treaties. The data set comprised more than 900 treaties which were subjected to an initial review, from which we identified nearly 350 clauses for closer analysis and review. The treaties and model clauses surveyed were selected to ensure the inclusion of a broad range of dispute clauses from different time periods and geographical regions, as well as all known clauses that provide for mediation in some form.

Observations from the survey regarding (1) the specific ways in which mediation (and other forms of amicable dispute resolution) has been included in disputes clauses, and (2) the extent to which clauses that include amicable dispute resolution mechanisms, such as mediation, seek to regulate procedure, are set forth below.

3 Analysis: Mediation in Investment Treaties

The ways in which disputes clauses in investment treaties and model clauses have provided for amicable dispute resolution generally, and mediation specifically, have evolved considerably over time.

Many early generation investment treaties provided for the submission of an investment dispute for example, to ICSID for resolution by arbitration or conciliation at the investor's election as the first method of dispute resolution. These early treaties made no mention of alternative dispute resolution mechanisms prior to this step. Examples of such treaties include the Jordan-UK BIT (1976), Article 6, the Estonia-Netherlands BIT (1992), Article 9, and the Georgia-Netherlands BIT (1998), Article 9.

Over the past 25-30 years, there has been a gradual trend to expressly provide for amicable dispute resolution within disputes clauses. The last decade has seen an increase in the provision for mediation as a means of amicable dispute resolution.

Broadly speaking, clauses that include amicable dispute resolution methods can be placed into five categories:

- Clauses with an amicable settlement period and, potentially, a bare direction to seek “amicable settlement” prior to the institution of arbitration;
- Clauses that expressly permit mediation or other specified amicable dispute resolution mechanism prior to arbitration;
- Clauses affirmatively encouraging the use of mediation or other amicable dispute resolution mechanisms in the amicable settlement / “cooling off” period;
- Clauses mandating mediation or other amicable dispute resolution mechanisms prior to arbitration;
- Clauses permitting mediation at any point in time (i.e., stand-alone mediation).

Each category is explained below.

3.1 Clauses with an amicable settlement period and, potentially, a bare direction to seek “amicable settlement” prior to arbitration

Many disputes clauses contain an amicable settlement period, ranging from 3 months to 2 years, that must elapse before a dispute can be referred to arbitration. Some only specify an amicable settlement period, without more. For example, the Bolivia-US BIT (1998) provides in Article IX(2) that “a... party to an investment dispute may submit the dispute for resolution” to binding arbitration, provided “that three months have elapsed from the date on which the dispute arose.”

More commonly, however, such clauses are coupled with a general direction that the parties to the dispute should attempt to resolve the dispute “amicably”. These clauses typically make the initiation of an arbitration contingent upon the dispute having not been resolved during the amicable settlement period. Clauses in this category remain silent as to the process the parties might use to achieve amicable settlement. In addition, they do not affirmatively require the parties to do anything within the amicable settlement period; rather, all that is required is the expiry of the amicable dispute period.

An example of such a clause is Article 10 of the Peru-UK BIT (1993), which provides “*Any legal dispute ... shall, as far as possible, be settled amicably between the two parties concerned. If any such dispute cannot be settled within three months between the parties to the dispute through amicable settlement, pursuit of local remedies or otherwise, each Contracting Party hereby consents to submit it to [ICSID] for settlement by conciliation or arbitration...*” Other examples are found in the Hungary-UK BIT (1987), Article 8, the Indonesia-Netherlands BIT (1994), Article 9, and the Georgia-Israel BIT (1995), Article 8.

3.2 Clauses explicitly *permitting mediation* or other specified amicable dispute resolution methods prior to arbitration

The more recent years have seen an increase in the number of disputes clauses in investment treaties that expressly provide for amicable settlement, through (i) providing for optional “non-binding third party procedures” (or similar phrases), which would include processes such as mediation, fact-finding, and expert determinations, (ii) providing specifically for optional mediation, or (iii) including advance consent of the State to mediate at the investor’s election.

The China-New Zealand FTA (2008) provides an example of language referencing optional third-party procedures during a specified amicable settlement period. It stipulates that “*Any legal dispute ... shall, as far as possible, be settled amicably through consultations and negotiations between the investor and that other Party, which may include the use of non-binding third-party procedures, where this is acceptable to both parties to the dispute.*” (Chapter 11, Article 152, emphasis added). This clause imposes a six-month amicable settlement period. Other similar examples can be found in the US Model BIT (2012) (Article 23), the Argentina-UAE BIT (2018) (Article 20), and the Taiwan-Viet Nam BIT (2019) (Article 18).

One of the earliest examples of a clause providing for optional mediation during the cooling off period is Article 10.15 of the CAFTA-DR (2006). This article provides that “*In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation*” (emphasis added). More recently, the Australia-Hong-Kong IA (2019) (Article 23) and Australia-Peru FTA (2020) (Article 8.19) have included clauses with the following language: “*In the event of an investment dispute, the claimant and the respondent shall initially seek to resolve the investment dispute through consultations, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.*” Further examples can be found in the Kazakhstan-UAE BIT (2018) (Article 10), and the CPTPP (2018) (Article 9.18).

In terms of advance consent of the State to mediation, the Mainland-Hong Kong, as well as the Mainland-Macau, CEPA Investment Agreements (2017), (Articles 19 and 20), provide that disputes can be resolved in a number of ways, including through mediation at the investor’s election. Another example can be found in the China-Taiwan Province of China Cross-Straits Bilateral Investment Protection and Promotion Agreement (2012), Article 13.

3.3 Clauses affirmatively encouraging mediation or other amicable dispute resolution mechanisms during the amicable settlement period

A number of clauses go further than simply stipulating that the parties “may” agree to mediation or another amicable dispute resolution method during the specified period. Rather, they affirmatively encourage the use of one or more designated amicable dispute resolution mechanisms.

Some clauses stipulate that specific conditions or milestones must be achieved with respect to the designated amicable dispute resolution mechanism, in the period after the filing of the notice of dispute / request for consultations. In including such requirements, these clauses encourage use of the mechanism.

For example, a number of clauses stipulate a specific timeframe within which the amicable dispute resolution mechanism must commence. Thus the ASEAN Comprehensive IA (2009) provides at Article 31: *“In the event of an investment dispute, the disputing parties shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Member State. Consultations shall commence within 30 days of receipt by the disputing Member State of the request for consultations, unless the disputing parties otherwise agree”* (emphasis added). A number of other treaties, including the Canada-Moldova BIT (2018), Belarus-Hungary BIT (2019), EU-Viet Nam IPA (2019), Japan-Morocco BIT (2020) and CETA (2017), similarly impose timeframes for the commencement of the designated amicable dispute resolution procedure.

The Colombia Model BIT (2011) took a slightly different tack, mandating that the amicable dispute resolution procedure (in this instance “consultations and negotiations”) take place over a minimum timeframe and not simply that a particular timeframe must lapse before an arbitration can be commenced. Its Article 13(3) provided that: *“Any controversy ... must be resolved by the parties in dispute, to the extent possible, through consultations and negotiations. ... The consultations and negotiations will be carried out for a minimum period of six (6) months, extendable by agreement between the parties, and may include face-to-face meetings in the capital of the Party receiving the investment”* (emphasis added). While Colombia’s later Model BIT (2017) differs in a number of respects from its 2011 precursor, it still stipulates that *“Consultations shall take place, as far as possible, through meetings in the capital city of the Respondent State for a period of six (6) months. This period may be waived, or the term reduced, by written certification by the Respondent State.”*

Another recent BIT has imposed an obligation on the disputing parties to give favorable consideration to a request for mediation. Article 17.1 of the Netherlands Model BIT (2019) expressly contemplates that the parties may reach a mediated settlement at any point in their dispute, including after arbitration proceedings have been commenced. It provides *“[a]ny dispute should, as far as possible, be settled amicably through negotiations, conciliation or mediation... A disputing party shall give favorable consideration to a request for negotiations, conciliation or mediation by the other disputing party. ...”* (emphasis added).

3.4 Clauses mandating mediation or other amicable dispute resolution procedures prior to arbitration

A small handful of clauses have gone further still, by (i) imposing an obligation on both disputing parties to undertake mediation, (ii) requiring a designated procedure to have taken place before an arbitration can be initiated, or (iii) making participation in the designated amicable dispute resolution procedure mandatory for the investor, at the State's election.

The COMESA Investment Agreement (2007) affirmatively requires the parties to seek to resolve the dispute amicably during the six-month amicable settlement period, and mandates mediation as the default procedure for achieving amicable settlement in this period. Article 26 provides: "1. *In the event that a dispute arises ... between a Member State and a COMESA investor, the party wishing to raise the dispute shall issue a notice of intention to initiate a claim under the dispute resolution process provided for ... under this Agreement to the other potential disputing party ("notice of intention").* 2. *... there shall be the minimum of a six-month cooling-off period ...* 3. *The parties shall seek to resolve potential disputes through amicable means, both prior to and during the cooling-off period.* 4. *Where no alternative means of dispute settlement are agreed upon, a party shall seek the assistance of a mediator to resolve disputes during the cooling-off period ...*" (emphasis added). The Costa-Rica UAE BIT (2017) provides another example. Its Article 14 stipulates that investment disputes will "*be resolved, to the extent possible, through consultation and negotiation*" but that "[i]n the event that an investment dispute cannot be resolved through consultations and negotiations in accordance with paragraph 1, within three months after the respondent receives notification of the dispute, it must submit to a third - party procedure such as conciliation or mediation before an authorized center of the Party complained against in the dispute" (emphasis added).

A small number of more recent treaties have adopted a different approach to require that a specified process be conducted as a precondition to arbitration. For example, the EU-Viet Nam IPA (2019) conditions the eventual submission of a claim to arbitration on (i) a minimum period of 6 months having passed since the request for consultations and 3 months having passed since the notice of intent to submit an arbitration claim, and on (ii) the condition that "*the legal and factual basis of the dispute was subject to prior consultations*" (Article 3.35) (emphasis added). In other words, this Treaty appears to require affirmative participation, at some level, in "consultations," as a condition precedent to arbitration. The EU-Singapore IPA (2018) is substantively the same.

In addition, at least four recent treaties appear to make the designated amicable dispute resolution procedure mandatory for the investor, at the State's election. Thus:

- The Australia-Indonesia CEPA (2019) provides for consultations in the initial phase, followed by a mandatory conciliation phase. It stipulates that "[i]f the dispute cannot be resolved within 180 days from the date of receipt by the disputing Party of the written request for consultations, the disputing Party [i.e., the State party to the dispute] may initiate a conciliation process, which shall be mandatory for the disputing investor, with a view towards reaching an amicable settlement." (Chapter 14, Article 14.23) (emphasis added). It further conditions the commencement of an arbitration on 120 days having elapsed since

the State initiated the conciliation process, where the State has elected to do so (Article 14.26(2)(b)). The provisions of the Indonesia-Korea CEPA (2020) are similar.

- The Mauritius-UAE BIT (2015) also provides for “consultations and negotiations” in the initial phase, and thereafter makes mediation or conciliation mandatory for investors, at the State’s election. Its Article 10(3) provides “*When required by the Contracting Party, if the dispute cannot be settled amicably within three months from the date of receipt of the written notice, it shall be submitted to the competent authority of that Contracting Party or arbitration centers thereof, for conciliation and mediation*” (emphasis added). The investor can initiate an arbitration “*if the dispute cannot be settled amicably within six months from the date of the start of the conciliation and mediation process.*” (Article 10(4)). The Armenia-UAE BIT (2016) contains identical provisions.

3.5 Clauses permitting mediation at any point in time (stand-alone mechanism for mediation)

A final category of disputes clauses provide, in addition to typical provisions permitting arbitration of a dispute, that the parties can agree to mediation of a dispute at any point in the dispute resolution process (i.e., prior to or during the amicable settlement period or parallel to an ongoing arbitration). Such clauses create a stand-alone option for mediation, which supplements the other requirements for dispute resolution in the relevant clause. These clauses make mediation optional, and subject to an additional agreement to mediate between the investor and the State.

The recent EU-Singapore and EU-Viet Nam IPAs, discussed above, are examples of treaties with stand-alone mediation options, providing that “[t]he disputing parties may at any time, including prior to the delivery of a notice of intent, agree to have recourse to mediation.” Other examples include the Burkina Faso-Canada BIT (2015) (“*The disputing parties may at any time, be it after notice of intent to submit a claim to arbitration has been given or after a claim has been submitted to arbitration, agree to mediation*”), Article 23, CETA (2016), Article 8.20, the Netherlands Model BIT (2019), Article 17(1), and the Thailand Model BIT (2012), Article 10.

4 Analysis: Regulating the mediation procedure in Investment Treaties

Existing investment treaties and model clauses are informative not just with respect to the question of the ways and extent to which States have provided for amicable dispute resolution, including mediation, but also to the question of how such clauses have sought to regulate the process of these procedures.

The substantial majority of investment treaties and model clauses that expressly provide for amicable dispute resolution, including through mediation, do not regulate the procedure or procedural steps. This may reflect the understanding that the appropriate procedure in any given case is dispute-specific, and can readily be agreed upon by the parties to the dispute, including through the incorporation of institution-specific investment mediation rules, such as the ICSID Mediation Rules.

To the extent disputes clauses do regulate the procedure for amicable dispute resolution, they typically provide only minimal procedural guidance, mainly relating to the commencement of the process, and how the process interacts with other proceedings relating to the same dispute. Examples of this guidance are detailed below.

4.1 Written notice requirements

Many disputes clauses will require one of the disputing parties, typically the investor, to initiate the process for amicable dispute resolution by filing a written notice of dispute or written request to initiate amicable dispute settlement (e.g., mediation). This is usually (although not always) a written notification that is separate from and filed prior to a subsequent notice of intent to submit a claim to arbitration.

There are different approaches to whether the notice must merely inform of the existence of a dispute, or must request the commencement of a process (e.g., mediation or other amicable dispute resolution procedure). Some clauses, like Article 9.16 of the Central America-Korea FTA (2018) (which provides for initial settlement by consultation and negotiation, including through optional mediation), call for notification of the dispute only, requiring a "*dispute ... [to] be notified by submitting a notice of the dispute (notice of dispute) in writing...*". Others, such as Chapter 11, Article 152 of the China-New Zealand FTA (2008), call for submission of a written request to institute the designated amicable dispute procedure: "*a request for consultations and negotiations shall be made in writing...*". The CPTPP (2018), Chapter 9, Article 9.18(2), the Japan-Morocco BIT (2020), Article 16(3), and the Australia-Peru BIT (2020), Article 8.19(2), all take this approach. Others do not require any notice prior to amicable settlement attempts, but rather focus on the submission of a 'notice of intent' to submit a claim to arbitration. For example, the Argentina-Japan BIT (2018), which directs the parties initially to seek consultation and negotiation, including through non-binding third-party procedures, does not require any written notice until the "notice of intent," is delivered "[a]t least 90 days before submitting any claim to arbitration" (Article 25(3)).

There are a range of approaches regarding the detail required in any written notice. Some clauses stipulate only that "written notice" be provided, without specifying what that notice must contain (e.g., Indonesia-Singapore BIT (2005), Article 8). Others stipulate that the written notice be "*accompanied by a sufficiently detailed memorandum*" or that the notice include "*detailed information of the facts and legal basis*" of the dispute (e.g., Belgium-Luxembourg-Montenegro BIT (2010), Article 12(1); China-Colombia BIT (2008), Article 9(2)).

Some disputes clauses include a qualitative standard to explain the amount of detail required in the written notice. For example, Article 14(6) of the Norway Model BIT (2015) requires a notification in the form of a request for consultation to "*include information sufficient to present clearly the issues in dispute so as to allow the Parties and the public to become acquainted with them.*"

More recent disputes clauses have specified the precise detail required in a written notice of dispute / request to initiate amicable dispute resolution. This may include a factual description of the dispute, information relating to the investor, identification of provisions allegedly breached, the outcome or relief sought and the provision of supporting documents. For example, the Argentina-UAE BIT (2018) requires that "*The investor seeking consultations will submit a written*

request for consultation, specifying: (a) the name and address of the investor and, where the claim is made on behalf of an enterprise, the name, address and place of incorporation of the enterprise; (b) the provision of this Agreement alleged to have been breached and any other applicable provisions; (c) the factual and legal basis for the claim; (d) the relief sought and the approximate amount of damages claimed; and (e) the evidence proving its condition of investor of the other Party and the existence of an investment." (Article 20(4)).

By contrast, some clauses do not require such detail in the initial request for amicable dispute resolution, and require it instead only where the disputing party seeks to proceed to the next stage of the dispute resolution process, such as when filing a notice of intent to submit a claim to arbitration. For example, the Australia-Hong Kong BIT (2019) requires the parties to *"initially seek to resolve the investment dispute through consultations, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation."* It requires that the initiating party *"deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue."* Subsequently, further detail is required in a subsequent *"written notice of its intention to submit a claim to arbitration"* and is only necessary if the dispute has not been resolved in the initial "consultations" phase.

4.2 Response to / favorable consideration of a request for mediation or other amicable dispute resolution

A very small number of clauses regulate when and how a request for consultation / mediation or other amicable dispute resolution mechanism should be responded to by its recipient. For example, the Netherlands Model BIT (2019), stipulates that *"[a] disputing party shall give favorable consideration to a request for negotiations, conciliation or mediation by the other disputing party"* (Article 17.1) (emphasis added). The EU-Singapore IPA (2018) and the EU-Viet Nam IPA (2019) both include provisions requiring the recipient to *"give sympathetic consideration to the request and reply by accepting or rejecting it in writing within ten days of its receipt"* (emphasis added). CETA (2017) contains a similar provision (Annex 29(C), Article 2(2)).

4.3 Designated agency provisions

A growing number of treaties specify the agency to which requests for amicable dispute resolution are to be directed. Such clauses ensure that the appropriate entity within a State is aware of an existing dispute, including in its early stages, and can actively manage its resolution. Some clauses also require the State parties to the Treaty to update (and make public) its designated agency or contact information. Article 8.31 of the Australia-Peru BIT (2018) is one example. It provides *"Delivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 8-C. A Party shall promptly make publicly available and notify the other Party of any change to the place referred to in that Annex."* Other examples can be found in Article 29 of the Argentina-Japan BIT (2018) and in Article 23 of the Canada-Tanzania BIT (2013).

4.4 Without Prejudice Provisions and Confidentiality

Disputes clauses that expressly provide for amicable dispute resolution increasingly include an express "without prejudice" clause, making clear that participation in these procedures is not a concession as to jurisdiction should the dispute proceed to arbitration. Examples of such clauses

can be found in Article 25(1) of the Argentina-Japan BIT (2018), and Article 9.18(3) of the CPTPP (2018). Other treaties are broader, making clear that information shared during the amicable settlement process will not prejudice any aspect of the legal position of either party in other proceedings. For example, CETA (2017) stipulates “[r]ecourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter.” (Article 8.20(2)).

The majority of treaties do not address this issue, perhaps in light of the possibility that the parties to a dispute can agree upon such matters. Indeed, in the case of mediation, this is a matter covered by ICSID Mediation Rule 11, which will be applicable by default should the parties agree on the application of the ICSID Mediation Rules to their mediation.

So too, the question of confidentiality and disclosure of information in a mediation can be addressed by the parties when they agree to mediate, including by agreeing to the application of a set of institutional mediation rules (see e.g., ICSID Mediation Rule 10). Nevertheless, this matter is also addressed in a few treaty disputes clauses. These include the Thailand Model BIT (2012) (stipulating in Article 10(4) that a mediation shall be confidential), and CETA (2017), which stipulates in Annex 29(C), Article 6, that the mediation proceeding shall be confidential, except for the fact that the mediation is taking place, and except for the outcome (providing that “*mutually agreed solutions shall be made publicly available,*” subject to the redaction of designated confidential information).

4.5 Relationship Between Mediation and Other Proceedings

A number of recent clauses have further addressed the relationship between the mediation or other amicable dispute resolution mechanism and other proceedings. For example, the EU-Viet Nam IPA (2019), allowing parties to agree to mediation at any time, makes explicit that this option can be exercised even if an arbitration proceeding has already been commenced. It also mandates that an arbitral tribunal constituted prior to mediation “*shall stay its proceedings until the date on which either party to the dispute decides to terminate the mediation, by way of a letter to the mediator and the other disputing party*” (Article 3.31(5)).

The same Treaty also addresses the impact of initiating mediation on applicable limitation periods. For example, the EU-Viet Nam IPA provides expressly that certain applicable limitation periods, including the period for submitting a dispute to arbitration, are tolled for the period of voluntary mediation (Article 3.31(5)).

4.6 Other Provisions

A few recent treaties prescribe mediation procedure in some detail. These treaties include CETA (2017), Annex 29(C), the EU-Singapore IPA (2018), Annex 6, and the EU-Viet Nam IPA (2019), Annex 9. Other treaties do not address mediation procedure at all, while still others may address one or two aspects of the procedure. This includes the COMESA IA (2007), Article 26(4), and the Belgium-Luxembourg Model BIT (2019), Article 19(C) which, like CETA (2017), designates the Secretary-General of ICSID as appointing authority to appoint a mediator where the parties request).

Parties to a particular dispute may agree on the rules of procedure to govern their mediation, including by agreeing to a set of institutional rules, such as the ICSID Mediation Rules. The ICSID Mediation Rules comprehensively address all aspects of mediation procedure, from the agreement to mediate, selection of the mediator, the mediation process, and termination of the mediation. Moreover, the ICSID Mediation Rules have been drafted to ensure compliance that any mediated settlement agreement complies with the Singapore Convention. Finally, institutional rules can be amended over time, ensuring they continually reflect evolving best practice. The incorporation by reference of the ICSID Mediation Rules (possibly coupled with a few specific additional provisions in the underlying treaty), can provide assurance to the future disputing parties regarding the steps to be taken in a mediation and can avoid the possibility of lacunae in the process.

5 Concluding Notes

For any State seeking to prepare treaty disputes clauses that meaningfully incorporate mediation and / or other amicable dispute resolution mechanisms, having a broad understanding of the varying approaches taken in the past to such matters may be valuable. The above survey highlights a number of matters that may be considered when drafting provisions for mediation in a dispute clause:

- When to make mediation available within the investment conflict continuum (i.e., prior to or during the amicable settlement period, or at any stage of the dispute, including in parallel to other dispute settlement procedures such as arbitration).
- Whether to make mediation optional (i.e., requiring further agreement of the disputing parties), mandatory, or mandatory at the election of one or other of the disputing parties (and, for optional mediation, whether to include language that encourages its use).
- What is the appropriate duration of an amicable settlement period (the vast majority of modern disputes clauses impose a cooling off period of between 3 and 18 months, with more recent clauses typically setting a 6- to 9-month period), and relatedly, whether the text of a provision prescribing the amicable period should endeavor to convey that the expiration of the amicable settlement period is intended to be a procedural requirement that can be waived or a jurisdictional pre-requisite to the commencement of arbitration.
- Whether to require a written notice of dispute or a written request to initiate an amicable dispute resolution mechanism such as mediation, what such notice should include, and whether it would be preferable to require the lodging of different written notifications/ requests for different stages of dispute resolution (e.g., a notice of dispute, and notices requesting consultation/ mediation/ arbitration at different stages).

- Whether to stipulate the entity or agency to which notices relating to disputes should be sent (and the address thereof), and to include a mechanism to ensure that this information remains up to date and publicly accessible over the lifetime of the treaty.
- Whether to require a response to a request for mediation or other amicable dispute settlement procedure (and whether to impose a time frame for such a response, and or to require that “favorable” consideration be given).
- Whether to include any provisions that address the interrelationship between the mediation procedure and other processes, such as arbitration, including provisions providing for the tolling of applicable limitation periods and without prejudice provisions.
- Whether, and to what extent, to regulate mediation procedure beyond simply stipulating that a set of existing investment mediation specific rules, such as the ICSID Mediation Rules (which already address all the elements of procedure and which are available for use by all States), apply to mediations under the treaty.

ICSID Documents on Investment Mediation

- ICSID. 2021. ICSID Mediation Rules, [“Working Paper # 5”](#).
- ICSID. 2021. [“Background Paper on Investment Mediation”](#).

Further reading

- ICSID. 2016. [“Practice Notes for Respondents”](#)