

# How Investment Treaties Address Mediation & Conciliation –

## *A Treaty Negotiator's Perspective*

1 Sep 2022

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# Singapore Convention on Mediation

- Applies to Settlement Agreement which:
  - resulted from mediation
  - is in writing
  - is “international” (eg, the disputing parties have places of business in different States)
  - involves a commercial dispute (ie, not personal, family, household, inheritance or employment)

[Article 1 *S'pore Convention*]

- cf New York Convention (for arbitral awards)
- Implemented domestically in Singapore via the *Singapore Convention on Mediation Act 2020*
- Currently 55 signatories;  
in force for 9 States



## Earlier Treaty Formulations (some examples)

“... may submit the dispute for **conciliation** or arbitration by [ICSID]”

OR

“... the [disputing parties] should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, **conciliation or mediation.**”

# Indonesia – Singapore BIT

## ARTICLE 16 MEDIATION

1. The disputing parties may, at any time, agree to have recourse to mediation. A request... shall be... in writing. The party to which the request is addressed **shall give sympathetic consideration to the request**, and reply by accepting or rejecting it in writing **within 10 days**...

2. Recourse to mediation is **voluntary** and **without prejudice** to the legal position of either disputing party.

... ..

# *EU – Singapore Investment Protection Agreement*

## ARTICLE 3.4

### Mediation & Alternative Dispute Resolution

1. The disputing parties may at any time, **including prior to** the delivery of a notice of intent, agree to have recourse to mediation.
2. Recourse to mediation is **voluntary** and **without prejudice** to the legal position of either disputing party.
- ... ..
5. The disputing parties shall endeavour to reach a mutually agreed solution **within 60 days** of the appointment of the mediator.

# *EU – Singapore Investment Protection Agreement*

## ANNEX 6 MEDIATION MECHANISM

### *Article 2 Initiation of the Procedure*

1. At any time, the disputing party may request the initiation of a mediation procedure. Such request shall be addressed to the other party in writing.
2. The party to which such request is addressed **shall give sympathetic consideration to the request** and reply by accepting or rejecting it in writing **within 10 days....**

... ..

*(Note: The Mediation Annex contains 8 articles and sets out procedural details.)*

# UNCITRAL Working Group III – ISDS Reform

## Working Paper #217 (13 Jul 2022):

### Draft Provisions on Mediation

1. Whether and How to Initiate Mediation
2. How Mediation relates to other Dispute Resolution Proceedings
3. Contents of Written Request
4. Applicable Mediation Rules
5. Without Prejudice
6. Confidentiality v Transparency
7. Finality & Enforcement of Settlement Agreements

## Working Paper #218 (20 Jul 2022):

### Draft Guidelines on Investment Mediation

- Procedural guidelines & details beyond the draft provisions in WP 217:  
*eg, timeframes; role of the mediator; role of parties; role of institutions; suitability checklist, etc*

**Thank You**

