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Investor-State Mediation *Resource Pack*

Better understand mediation in investor-State disputes & assess its suitability for your dispute.



RESOURCE PACK

4 Practical Factsheets

Government Counsel • In-House Counsel • Practitioners

The Investor-State Mediation Resource Pack

About this Resource Pack

This Resource Pack is designed to support **parties involved in Investor-State disputes** in considering mediation as a means of dispute resolution. It is intended for **government officials, in-house lawyers and their counsel.**

The Pack responds to a concern raised by legal practitioners: **how to make the case internally for considering mediation in a particular dispute**? Although mediation can offer unique benefits in Investor-State disputes, presenting it as a potential avenue for dispute resolution within a government, company or legal team can be challenging. The Pack provides **practical tools to help practitioners address common concerns through a user-friendly question-and-answer format, as well as a self-assessment tool** to help parties evaluate whether mediation may be suitable for a particular Investor-State dispute.

The Resource Pack was first presented at the partner event organised by the NUS Centre for International Law (CIL) for Singapore Convention Week 2026. The event focused on how lawyers can effectively advocate for mediation within their own organisations, with an emphasis on practical approaches and tools.

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How to use this Resource Pack

The Resource Pack comprises four sheets, which may be used independently. **Sheets 1 and 4 are intended for all users**, while **Sheets 2 and 3 address the particular considerations of government officials and in-house counsel, respectively**. Accordingly, State officials and their counsel may use Sheets 1, 2 and 4 while investors and their counsel may use Sheets 1, 3 and 4.

The four sheets are as follows:

Sheet 1 – Common Misconceptions, Addressed

Sheet 1 is a quick-reference guide addressing common misconceptions about mediation in Investor-State disputes, for government officials, in-house counsel, and private practitioners.

Sheet 2 – Concerns and Responses: Government Officials

Sheet 2 is a practical guide to addressing common concerns that government officials and government legal counsel may encounter when considering mediation in an Investor-State dispute.

Sheet 3 – Concerns and Responses: In-House Counsel

Sheet 3 is a practical guide to addressing common concerns that in-house counsel and private practitioners advising investors may encounter when considering mediation in an Investor-State dispute.

Sheet 4 – Self-Assessment: Is Mediation Suitable for This Dispute?

The self-assessment tool was designed to help parties reflect on whether mediation may be a suitable process for resolving a particular Investor-State dispute. It draws on internationally recognised guidance on mediation suitability, adapted to the specific features of Investor-State disputes.

Navigating the Resource Pack

The sheets are designed to be used in the **following suggested order**: Common Misconceptions, Concerns and Responses, and Self-Assessment. However, they may also be used **independently and in any order**, depending on the user's needs and the stage of consideration of mediation in the particular dispute. For instance, test users suggested that the self-assessment tool (Sheet 4) could be used first.

Each question-and-answer entry is **self-contained**, allowing readers to navigate the Pack selectively and focus on the issues most relevant to their circumstances, without needing to read the document from beginning to end.

Supporting Informed Consideration of Mediation

Ultimately, the Pack is intended to facilitate informed internal discussions about mediation, help practitioners address questions and concerns that may arise within their organisations, and support parties in assessing whether mediation may offer a suitable path towards resolving their dispute. It is not intended to advocate for mediation in every case, but rather to provide practical tools to help decision-makers approach the option with greater clarity and confidence, and to determine whether it merits further consideration in the circumstances of a particular dispute.

This Resource Pack is for informational purposes only and does not constitute or substitute for legal advice.

Sheet 1: Investor-State Mediation: Common Misconceptions, Addressed

A quick-reference brief for government lawyers, in-house counsel, and private practitioners considering mediation in investor-State disputes.

Misconception	Response
✗ *Mediation is a waste of time; parties will end up in arbitration anyway.*	✓ **Investor-State disputes do settle:** 17% of known ISDS cases were settled between 1987 and 2025. *(UNCTAD World Investment Report 2026)* ✓ The average duration of an investment mediation is **8 months** (and parties can walk away at any time) vs 4 years for arbitration. ✓ Investment arbitration (excl. award) costs an average of US$4.7 million for the State and US$6.4 million for the investor[1] versus 25k and 200k for investment mediation. [2]
✗ *Mediation is an unstructured process.*	✓ There is a defined **mediation process**, and available mediation rules that parties can adopt. *(ICSID Mediation Rules 2022, UNCITRAL Mediation Rules 2021)* ✓ Mediation can be conducted with the **administrative support** of mediation institutions.
✗ *Mediation is not possible if the investment treaty or contract does not provide for it.*	✓ Consent to mediation does not need to be expressed prior to the dispute. Parties **can agree to mediate at any point**. *(UNCITRAL Mediation Guidelines 2023)*
✗ *Statements or positions taken during mediation could have adverse consequences in subsequent proceedings*	✓ Settlement talks are **without-prejudice**, and statements, admissions, proposals made during mediation **cannot be relied upon in later proceedings** *(ICSID Mediation Rules 2022; UNCITRAL Mediation Rules 2021; IBA Rules for Investor-State Mediation 2012).*
✗ *Settlement agreements are difficult to enforce.*	✓ Data show that instances of parties failing to comply with a settlement agreement once reached are extremely rare. In addition, the Singapore Convention **removes the need to transform an international mediated settlement agreement into another enforceable instrument**, such as a court judgment or an arbitral award.[3]

[1] BIICL (British Institute of International and Comparative Law), Allen & Overy, *Empirical Study: Costs, Damages and Duration in Investor-State Arbitration*, 2021.
[2] Frauke Nitschke, *How to Assess the Suitability of Mediation for Investment Disputes*, Kluwer Mediation Blog, 2021.
[3] On Pathways for Ratification and Implementation of the Singapore Convention, see Asian Development Bank Institute, August 2026 Policy Brief.

Sheet 2: Investor-State Mediation: Concerns & Responses (Practitioners & Government Lawyers)

A quick-reference brief for government officials and government legal counsel weighing mediation in an investor-State dispute.

Concern	Response
1.Agreeing to mediate looks like admitting the State did something wrong.	**Consent to mediate is not an admission of liability**; settlement agreements can expressly record that resolution involves no admission of wrongdoing. Mediation is **only a commitment to negotiate, not a requirement to settle.**
2.We have started direct negotiations, and it is better to continue with that - we do not need a mediator.	A **mediator adds what unassisted negotiation structurally cannot**: surfacing underlying interests, reality-testing each side's position, and structured problem-solving. Without a neutral, negotiation also tends toward a zero-sum dynamic: one side's gain is the other's loss. The two are not mutually exclusive: **mediation is not a replacement for direct negotiation nor an acknowledgment of failure, but a resource to be drawn upon when direct negotiations have been exhausted.** In addition, a mediator's assistance can be valuable in **building consensus among the ministries** and departments whose approval would be needed to reach a mediated settlement.
3.Mediating means giving up our right to defend the measure or our regulatory autonomy.	"**It is not about abandoning rights but acknowledging that they are only part of the equation**"[1] and seeing mediation outcomes as a potential way to reduce the **risks (legal, financial, reputational, practical) associated with continued adversarial proceedings**. Mediation can also accommodate evaluative elements, such as a preliminary legal assessment by each party's legal counsel or a neutral expert where legal aspects do play a role, alongside economic, political, and environmental considerations. In addition, mediation might not require fully abandoning legal defences; **it can run in parallel with arbitration** and be discontinued at any time. That said, **not every case belongs in mediation**: where the State is confident in the legality of its measure and wants a binding, public ruling confirming that legality (for instance, to deter similar claims from other investors) arbitration, not mediation, might be the best option to deliver that outcome. A confidential settlement, by contrast, may resolve the individual dispute without providing the same public clarification of the measure's legality.
4.Settling sets a bad precedent and will invite copycat claims.	**Confidentiality is a default feature** under most mediation rules, and settlements are generally not published or cited as precedent; they can also include the investor's undertaking not to bring related claims. This is not guaranteed in every case, though: where a settlement requires a legislative or regulatory act to take effect, it becomes public by necessity. States should **assess upfront whether other investors affected by the same measure may expect similar treatment**.

[1] Professor Joel Lee, National University of Singapore, Class on Mediation in Investor-State disputes, 2025.

Concern	Response
5.The absence of a mediation clause in the treaty or contract is an obstacle.	Consent to mediate does not need to pre-exist the dispute; **parties can agree to mediate ad hoc at any stage, including in parallel with an ongoing arbitration.**[2]
6.In our jurisdiction, officials need specific legislation before they can engage in mediation at all.	An official sometimes has no inherent authority to bind the State or even to enter mediation. Where that is the case, **several States have solved it by legislating a "Lead Agency"** (see UNCITRAL Working Group III) with express authority to negotiate, mediate, or commission an evaluation on the State's behalf. [3]
7.We have no budget appropriation to pay a settlement.	The same funds would **in any case have to be provisioned for an arbitration** (typically a larger sum, years later). Settlements can also be structured around existing budget cycles or paid in phases. A key advantage of mediation is the flexibility it offers in **designing solutions, which need not be limited to monetary compensation but can also include non-monetary measures tailored to the parties' needs** (revised permits, contract amendments, regulatory clarifications etc.). In addition, **settlements need not be a lump-sum payout**; phased/contingent payments or tax adjustments for instance can resolve a dispute without new appropriation.
8.We will be accused of giving away public money without proper authority.	Settlements can be conditioned on the **same approval chain used for any public expenditure.** Mediators can also help structure this internal process, in effect facilitating a "mediation within the mediation" on the government side to build consensus among ministries. Mediation can also be **paired with a neutral evaluation** to help anchor the discussions. Where accountability is a concern (for instance, a government needing external validation of the number a settlement is arrived at) a separate, non-binding evaluation conducted before or alongside the mediation can be very useful. It can be procured privately by one party, or jointly by both. This is usually most valuable once the dispute has crystallised and some evidence has been served, since the evaluation will be considerably more accurate at that stage than at the outset of a dispute. If mediation is successful, States can use communications about the mediated settlement to **demonstrate that they are responsible stewards of public funds** (by avoiding a potentially costly adverse arbitral award) and reliable business partners for foreign investors. They can also highlight that the settlement followed a **structured, documented and duly authorised process**, with appropriate internal scrutiny and multi-level approval.
9.We do not have the internal structure/process to run a mediation.	**As with arbitration, an internal process** will have to be defined—mandates, approvals etc.—through a Lead State Agency or inter-ministerial committees (see concern 6 above on approval chains). Concerning the administration of the mediation, mediation institutions can provide **secretariat support**.
10.Individual officials could face personal / political exposure or	A documented, multi-level internal approval process (legal, financial, political sign-off) creates an **institutional record** that the settlement served public interest, was

[2] Under ICSID Mediation Rule 6 (Institution of Mediation Absent a Prior Party Agreement), the offer to mediate is made through the Secretary-General of ICSID. This offer-and-acceptance process immediately places the dispute settlement process within an international institutional framework.

[3] See also Model Instrument on the Management of Investment Disputes, Energy Charter Secretariat.

Concern	Response
investigations for agreeing to a settlement.	reasoned and duly authorised. This is the case for a formal **'public settlement safe harbour'**: "at a minimum, a legal risk note, a financial exposure comparison, an integrity screen, and written reasons before any settlement is approved" - *The Settlement Nobody Dares to Sign.*[4] Where the risk extends to potential criminal investigation of individual officials (a concern in some jurisdictions), structuring the approval as a **collective decision** of a panel or committee, rather than a determination attributable to any single official, further reduces individual exposure: responsibility is shared and documented as an **institutional judgment, not one person's discretionary call.** This also offers protection in the event of a **change in government**, since the settlement is anchored to a documented, **collegial process** rather than to the political judgment of officials who may no longer be in office.
11.How do we know a proposed mediator is actually qualified and trustworthy to handle a State-sensitive dispute?	**Due-diligence benchmarks** are available in the IMI Competency Criteria for Investor-State Mediators (2016) and the qualifications checklist in the IBA Rules for Investor-State Mediation (2012, Appendix B), both restated in UNCITRAL's Guidelines on Mediation for ISDS (2023). ICSID provides additional practical selection factors in its "practical considerations checklist".[5] Candidates can be vetted against all these elements in both ad hoc and institutional mediation. For ICSID mediations, ICSID Secretariat can assist parties in identifying experienced mediators.
12.It is difficult to find mediators with investment-law expertise.	Investment-law expertise is helpful but not essential, because **the mediator does not rule on the legal merits**. **Co-mediation** is an option to pair investment-law depth with mediation skill. It allows the parties to benefit from complementary expertise, pairing a mediator with investment-law knowledge with one who brings specialised skills in facilitating dialogue, managing negotiations and helping the parties identify mutually acceptable solutions.
13.What guarantees do we have of the mediator's conduct, and what if the mediator's conduct raises concerns once the mediation is already underway?	A mediator's **independence and impartiality** constitute the non-negotiable baseline (ICSID Mediation Rules; IBA Rules for Investor-State Mediation; UNCITRAL Mediation Rules—none of the three has a standalone mediator code of conduct, but each embeds binding conduct obligations). Separately, IMI's Code of Professional Conduct for Mediators offers a further reference point for standards. If concerns arise once the mediation is underway, the **duty for the mediator to disclose anything affecting independence or impartiality is ongoing throughout the mediation** (IBA Rules, Article 3(4), ICSID Mediator Disclosure Form). A mediator must resign upon the parties' joint request. And because mediation is voluntary, either party can simply **end the mediation at any time if they have lost trust in the process**.[6]
14.Our positions can be used against us in a future arbitration.	In a mediation, communications, documents, and disclosed information are **confidential**. **Settlement talks are without-prejudice** and statements, admissions, proposals, and settlement positions made during mediation cannot be relied upon in later proceedings (ICSID Mediation Rules; UNCITRAL Mediation Rules; IBA Rules for Investor-State Mediation).

[4] Dr. Ahmed Gamal Eldin Hamed Ibrahim, "Daily Jus", August 2026.
[5] See also criteria in ICSID Background Paper on Investment Mediation, section 8, p. 10.
[6] See for instance ICSID Mediation Rule 22.

Concern	Response
15.Some investment treaties include mediation disclosure requirements.	While several recent investment treaties and FTA[7] investment chapters include disclosure requirements, these generally do not require full disclosure. A distinction should be drawn between the **disclosure of the *existence* of the mediation, of the *agreement to mediate* and of a *public version of the settlement***. The EU-Singapore Investment Protection Agreement provides that "Mutually agreed solutions shall be made publicly available" while allowing the publicly disclosed version to exclude information that a disputing party has designated as confidential.[8] Beyond this treaty floor, each State typically retains **discretion to determine its own disclosure policy**; how, when, and through what channel a settlement is made public is generally left to domestic practice, not determined by the treaty itself.
16.Confidentiality will not survive our domestic transparency or freedom-of-information laws.	Parties can tailor confidentiality arrangements, while allowing appropriate public disclosure where required by law or policy. Mediation rules (ICSID Mediation Rules 2022; UNCITRAL Mediation Rules 2021) provide **default confidentiality protections that can be tailored to domestic law**. Some transparency regimes also carry a privilege exception for settlement or "without prejudice" communications - an aspect that should be examined, as this varies by jurisdiction.
17.There will be power imbalance during the mediation.	An **experienced mediator will help balance** negotiations through careful process management, separate caucuses, and procedural safeguards. Institutional backing or independent technical experts can also help with the potential asymmetry.
18.The other party will use mediation to delay compliance with regulatory measures or to obtain additional information.	Information disclosed during a mediation is **confidential** and settlement talks are **without-prejudice**. As for potential delays, mediation is generally **not a lengthy process**, with investment mediations averaging around 8 months. Delays can also be minimised by agreeing upfront on a **clear and strict mediation timetable**. Delay risk can be minimised further by agreeing upfront to a fixed mediation period (e.g. 3 months), after which the parties either terminate or expressly agree to extend. As Professor Joel Lee notes, "Good Faith often follows credible process safeguards; it does not necessarily precede them".[9]
19.The investor will never negotiate in good faith during the cooling-off period (mediation at that stage is just a tactical move, not a genuine settlement effort).	Mediation is not confined to the cooling-off period; **it can be tried at any stage**, including after arbitration starts, **throughout the arbitration process** and **even after the award is rendered**.[10] If an early attempt is purely tactical, mediation can be tried again once the case and evidence have crystallised. Mediation also **does not need to resolve the whole dispute**: it can settle discrete issues while the rest goes to arbitration, and the two can run in parallel. Arbitrators can help the parties work out how to integrate this at case management conferences.

[7] Free Trade Agreements.
[8] EU-Singapore Investment Protection Agreement, Annex 6 (Mediation Mechanism for Disputes between Investors and Parties), Article 4, para. 6.
[9] Professor Joel Lee, National University of Singapore, Class on Mediation in Investor-State disputes, 2025.
[10] Although there is no evidence that mediation was used, the parties in *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru* reached a settlement after the arbitral award had been rendered.

Sheet 3: Investor-State Mediation: Concerns & Responses (Practitioners & Corporate Counsel)

A quick-reference brief for private practitioners and corporate/in-house counsel weighing mediation in an investor-State dispute.

Concern	Response
1.We have started direct negotiations, and it is better to continue with that - we do not need a mediator.	A **mediator adds what unassisted negotiation structurally cannot**: surfacing underlying interests, reality-testing each side's position, and structured problem-solving. Without a neutral, negotiation also tends toward a zero-sum dynamic: one side's gain is the other's loss. The two are not mutually exclusive: **mediation is not a replacement for direct negotiation nor an acknowledgment of failure, but a resource to be drawn upon when direct negotiations have been exhausted.**
2.My client (board or shareholders) expects an award, not a negotiated compromise.	**A large share of ISDS claims is lost** (UNCTAD data 2025: investors prevail in only 29% of cases) **or only partially won**; a settlement reached in months, without the years of legal fees can often be the stronger result to present to a board. Framed this way, mediation is not a retreat from the client's/board's expectations, it is a risk-management tool that can deliver more value, sooner, than pursuing an award.
3.We might leave value on the table compared to a favourable award.	Mediation does not require accepting an unsatisfactory outcome; **either side can walk away at any point** and proceed to arbitration. It adds an option, not an obligation. Mediation is **only a commitment to negotiate, not a requirement to settle.**
4.Suggesting mediation makes us look weak or signals a poor legal case to the other side.	"**It is not about abandoning rights but acknowledging that they are only part of the equation**"[1] and seeing mediation outcomes as a potential way to reduce the **risks (legal, financial, reputational, practical) associated with continued adversarial proceedings**. Mediation can also accommodate evaluative elements, such as a preliminary legal assessment by each party's legal counsel or a neutral expert where legal aspects do play a role, alongside economic, political, and environmental considerations. In addition, mediation might not require fully abandoning legal defences; **it can run in parallel with arbitration** and be discontinued at any time.
5.I will be blamed internally for not pursuing full recovery if I recommend mediation.	A documented cost-benefit analysis—considering arbitration costs, realistic probability of success etc.—**creates a record that the recommendation was reasoned**, supporting mediation as a defensible professional judgment, not a shortfall.
6.How do we know a proposed mediator is actually qualified for a complex investment dispute?	**Due-diligence benchmarks** are available in the IMI Competency Criteria for Investor-State Mediators (2016) and the qualifications checklist in the IBA Rules for Investor-State Mediation (2012, Appendix B), both restated in UNCITRAL's Guidelines on Mediation for ISDS (2023). ICSID provides additional practical selection factors in its "practical considerations checklist".[2] Candidates can be vetted against all these elements in both ad hoc and institutional mediation. For ICSID mediations, ICSID Secretariat can assist parties in identifying experienced mediators.

[1] Professor Joel Lee, National University of Singapore, Class on Mediation in Investor-State disputes, 2025.
[2] See also criteria in ICSID Background Paper on Investment Mediation, section 8, p. 10.

Concern	Response
7.What guarantees do we have of the mediator's conduct, and what if the mediator's conduct raises concerns once the mediation is already underway?	A mediator's **independence and impartiality** constitute the non-negotiable baseline (ICSID Mediation Rules; IBA Rules for Investor-State Mediation; UNCITRAL Mediation Rules—none of the three has a standalone mediator code of conduct, but each embeds binding conduct obligations). Separately, IMI's Code of Professional Conduct for Mediators offers a further reference point for standards. If concerns arise once the mediation is underway, **the duty for the mediator to disclose anything affecting independence or impartiality is continuous throughout the mediation** (IBA Rules, Article 3(4), ICSID Mediator Disclosure Form). A mediator must resign upon the parties' joint request. And because mediation is voluntary, either party can simply **end the mediation at any time if they have lost trust in the process**.[3]
8.It is difficult to find mediators with investment-law expertise.	Investment-law expertise may be helpful but not essential, because **the mediator does not rule on the legal merits**. **Co-mediation** is an option to pair investment-law depth with mediation skill. It allows the parties to benefit from complementary expertise, pairing a mediator with investment-law knowledge with one who brings specialised skills in facilitating dialogue, managing negotiations and helping the parties identify mutually acceptable solutions.
9.Our positions could be used against us in a future arbitration.	In a mediation, communications, documents, and disclosed information are **confidential**. **Settlement talks are without-prejudice** and statements, admissions, proposals, and settlement positions made during mediation cannot be relied upon in later proceedings (ICSID Mediation Rules; UNCITRAL Mediation Rules; IBA Rules for Investor-State Mediation).
10.The government counterpart may lack real authority to bind the State, or a change in government could unwind the deal.	Ask upfront, in writing, **who has authority to bind the State and what internal approvals** are needed. The ultimate decision-maker need not be at the table, but the parties and mediator need to **make sure the negotiation and the eventual approval are linked**.[4] The mediated settlement can then be drafted with **conditions precedent**: clauses stating it only takes binding effect once those specific approvals (e.g., ministerial or legislative sign-off) are obtained and confirmed in writing. This protects the investor either way: if approval comes through, the settlement is enforceable on clear terms; if it doesn't, both sides know the deal never took effect.
11.The absence of a mediation clause in the treaty or contract is an obstacle.	Consent to mediate does not need to pre-exist the dispute; **parties can agree to mediate ad hoc at any stage**, including in parallel with an ongoing arbitration.[5]

[3] See for instance ICSID Mediation Rule 22.

[4] This is provided for in the First Session under ICSID Mediation Rule 20 (4).

[5] Under ICSID Mediation Rule 6 (Institution of Mediation Absent a Prior Party Agreement), the offer to mediate is made through the Secretary-General of ICSID. This offer-and-acceptance process immediately places the dispute settlement process within an international institutional framework.

Concern	Response
12.Some investment treaties include mediation disclosure requirements that could expose confidential business information.	While several recent investment treaties and FTA[6] investment chapters include disclosure requirements, these generally do not require full disclosure. A distinction should be drawn between the disclosure of the *existence* of the mediation, of the *agreement to mediate*, and of a *public version of the settlement*. The EU-Singapore Investment Protection Agreement provides that "mutually agreed solutions shall be made publicly available" while allowing the publicly disclosed version to **exclude information that a disputing party has designated as confidential**.[7] It is important to note that ad hoc agreements can operate alongside treaties, and the parties can tailor confidentiality provisions in their contractual arrangements.[8]
13.We are concerned about a power imbalance (facing a sovereign State's resources and political leverage in the mediation).	An **experienced mediator will help balance negotiations** through careful process management, separate caucuses, and procedural safeguards. Institutional backing or independent technical and legal experts can also help offset potential asymmetry.
14.The State could use mediation to delay arbitration deadlines or extract information about our case, without genuine intent to settle.	Information disclosed during a mediation is **confidential** and settlement talks are without-prejudice. As for potential delays, mediation is generally not a lengthy process, with investment mediations **averaging around eight months**. Delays can also be minimised by agreeing upfront on a clear and strict mediation timetable. As Professor Joel Lee notes, "Good Faith often follows credible process safeguards; it does not necessarily precede them."[9]
15.Our fee arrangement or the litigation funder's return is tied to an award, not a settlement.	In practice, funding agreements typically address this directly; most set out what happens when a settlement offer is being contemplated, including how the funder's return is calculated in that scenario. **Confirming exactly what the agreement provides**, and raising it early, avoids any real or perceived conflict of interest.
16.The State will never act in good faith during the pre-arbitration cooling-off period (any mediation attempt at that stage will be purely tactical or strategic, not a genuine settlement effort).	Mediation is not confined to the cooling-off period; **it can be tried at any stage**, including after arbitration starts, **throughout the arbitration process and even once the award is rendered**.[10] If an early attempt is purely tactical, mediation can be tried again once the case and evidence have crystallised. Mediation also **does not need to resolve the whole dispute**: it can settle discrete issues while the rest goes to arbitration, and the two can run in parallel. Arbitrators can help the parties work out how to integrate this at case management conferences.

[6] Free Trade Agreements
[7] EU-Singapore Investment Protection Agreement, Annex 6 (Mediation Mechanism for Disputes between Investors and Parties), Article 4, para. 6.
[8] See ICSID Model Clauses.
[9] Professor Joel Lee, National University of Singapore, Class on Mediation in Investor-State disputes, 2025.
[10] Although there is no evidence that mediation was used, the parties in *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru* reached a settlement after the arbitral award had been rendered.

Sheet 4: Mediation Suitability Assessment

This **self-assessment tool** is designed to help parties to an international investment dispute **reflect on whether mediation may be a suitable process for resolving their dispute**. It draws on internationally recognised guidance on mediation suitability[1], adapted to the particular features of investor-State disputes.

Each question below invites a simple **Yes or No** answer. Once completed, the responses can be used to calculate an indicative suitability score (see "Scoring Method" below).

***Instructions**: choose Yes, No or N/A (if a question does not apply) for every question from the drop-down in the Answer column. When all 18 are answered, click "Calculate my score" below the table (or press Tab after the last question) to see your result.*

#	Question	Answer (Yes / No / N/A)
1	Do we wish to continue our relationship going forward?	
2	Is there value (immediate or future) in managing or terminating this relationship amicably?	
3	Does maintaining this relationship matter for current/future investments or is otherwise relevant?	
4	Do we see value in the confidentiality that mediation offers, compared to the public nature of arbitration?	
5	Are we concerned by potential negative PR ramifications of long adversarial proceedings?	
6	Are there multiple issues, some of which could be narrowed down or streamlined via mediation?	
7	Would we prefer to retain control over the dispute resolution process and help shape the outcome, rather than leave the decision to an arbitral tribunal?	
8	Do we see the value of involving a neutral third party, including to help us build internal alignment?	
9	If several parties are involved, is it realistic to bring them together to explore a mutually acceptable solution through mediation?	
10	Is there value in including interested parties who would not have been included in litigation or arbitration?	
11	Is this dispute time-sensitive, and is a fast resolution a priority?	
12	Is resolving this dispute cost-effectively a priority?	
13	Is distrust towards the other party manageable, with a view to engaging in a dialogue?*	
14	Do we see value in broadening the considerations beyond legal analysis and arguments to include financial, political, environmental and other considerations?	
15	Are we open to tailored/creative solutions in addition to monetary relief (not necessarily instead of it)?	

[1] UNCITRAL Guidelines on Mediation for International Investment Disputes (2023); ICSID Background Paper on Investment Mediation (2021).

#	Question	Answer (Yes / No / N/A)
16	Are we ready to establish the necessary conditions internally to pursue mediation (e.g. appropriate authority, mandates, process engagement on approvals)?	
17	Do we feel that the current stage of the dispute is appropriate for mediation?	
18	If the current stage is not appropriate, do we feel there might be a more suitable time later? (Mediation remains possible even after arbitration has started, and at any point throughout the arbitration.)	

** Question 13 is foundational: some willingness to engage in dialogue is generally necessary for mediation to proceed at all. However, a "No" answer here is worth revisiting over time rather than being treated as final - see "Important Notes" below.*

Your Result

Once all 18 questions are answered, click **Calculate my score** to see your result. If you change an answer afterwards, click it again.

Scoring	Result
"Yes" answers	–
"No" answers	–
"N/A" answers	–
Applicable questions (18 – N/A)	–
Suitability Score	–
Indicative tendency	**Answer all 18 questions (N/A if a question does not apply), then click Calculate my score.**

Scoring Method

Suitability Score = (Number of "Yes" answers ÷ (18 − Number of "N/A" answers)) × 100

Score range	Indicative tendency
75% – 100%	Strong tendency toward mediation being suitable
50% – 74%	Moderate tendency — mediation plausible, but worth weighing against other processes
25% – 49%	Weak tendency — mediation may face significant obstacles
0% – 24%	Mediation likely not well-suited at this time

Important Notes

- This assessment is indicative only, not diagnostic, and is **intended purely as a self-assessment and reflection tool for the parties' own use**. It is designed to help parties **structure their thinking and identify considerations** that may not yet have been articulated. It is necessarily unilateral in nature, while the decision to pursue mediation is bilateral, as mediation can proceed only with the willingness of both parties.

- The resulting score reflects a **tendency, not a guarantee of successful mediation** or its outcome.

- Numeric weighting was deliberately not introduced, since assigning greater weight to particular questions would require a substantive judgment about which considerations matter most (one that could itself be seen as favouring a particular outcome). Because all questions are weighted equally, the score is better understood as **reflecting the breadth of favourable factors present**, rather than the true likelihood of suitability.

- Question 13 is flagged as foundational rather than weighted more heavily in the score, so as not to close the door to mediation based on an early answer. A "No" here is a starting point, not a verdict; willingness to engage often evolves, particularly once a party has had time to consider the process, or once initial hostility has settled. It may be worth revisiting the assessment at a later point.

- Perspectives may differ between State and Investor. Each party is encouraged to **complete the assessment independently**. A divergence in scores can itself be informative about where the real obstacles (or opportunities) lie.