

The logo for UNCITRAL Working Group III is a large orange circle with a thin blue border. Inside the circle, the text "UNCITRAL" is written in large white letters, "Working Group III" in smaller white letters, and "Virtual Pre-Intersessional Meeting" in even smaller white letters. Below this, "The Use of Mediation in ISDS" is written in blue and white. The logo is positioned on the left side of the slide, partially overlapping a light blue abstract shape.

UNCITRAL

Working Group III

Virtual Pre-Intersessional Meeting

The Use of
Mediation
in ISDS

THE ICSID PERSPECTIVE ON MEDIATION OF INVESTMENT DISPUTES

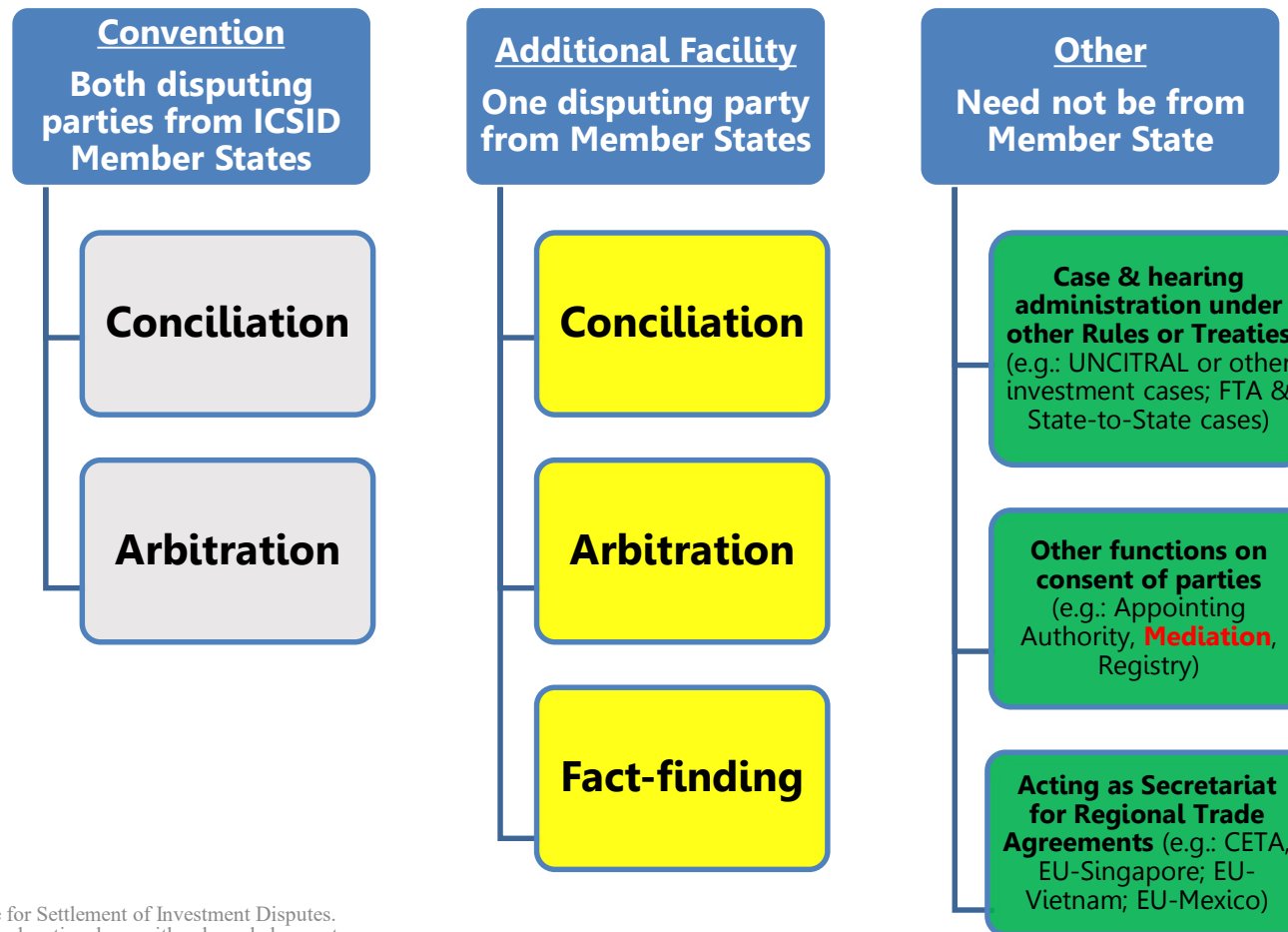
Meg Kinnear

Vice President, World Bank Group &

Secretary-General, ICSID

November 9, 2020

ICSID's Current Dispute Settlement Services



Proposed Amendments – Update and Increase Options for Dispute Settlement



- Updated Arbitration Rules
- Updated Conciliation Rules
- Updated Fact-Finding Rules
- New Mediation Rules

Why ICSID Mediation Rules?

The ICSID Mediation Rules are intended to:

- Offer disputing parties broad access to investment mediation facilities;
- Provide States and investors with an impartial, trusted forum to engage in facilitated negotiations;
- Provide a party-driven, flexible process with tailor-made solutions;
- Offer a time and cost-effective dispute resolution process;
- Reflect formal requirements for settlement agreements in the Singapore Convention.

Nature of ICSID Mediation – Consent Based

- ICSID Mediation is entirely voluntary
- Requires party consent at the outset & throughout the process
- Either party may unilaterally withdraw at any time (“*ongoing consent*”)

Two Ways to Consent to Mediation

(1) MR 5: CONSENT IN PRIOR PARTY AGREEMENT

- Written consent to mediate is found in relevant treaty, contract or law

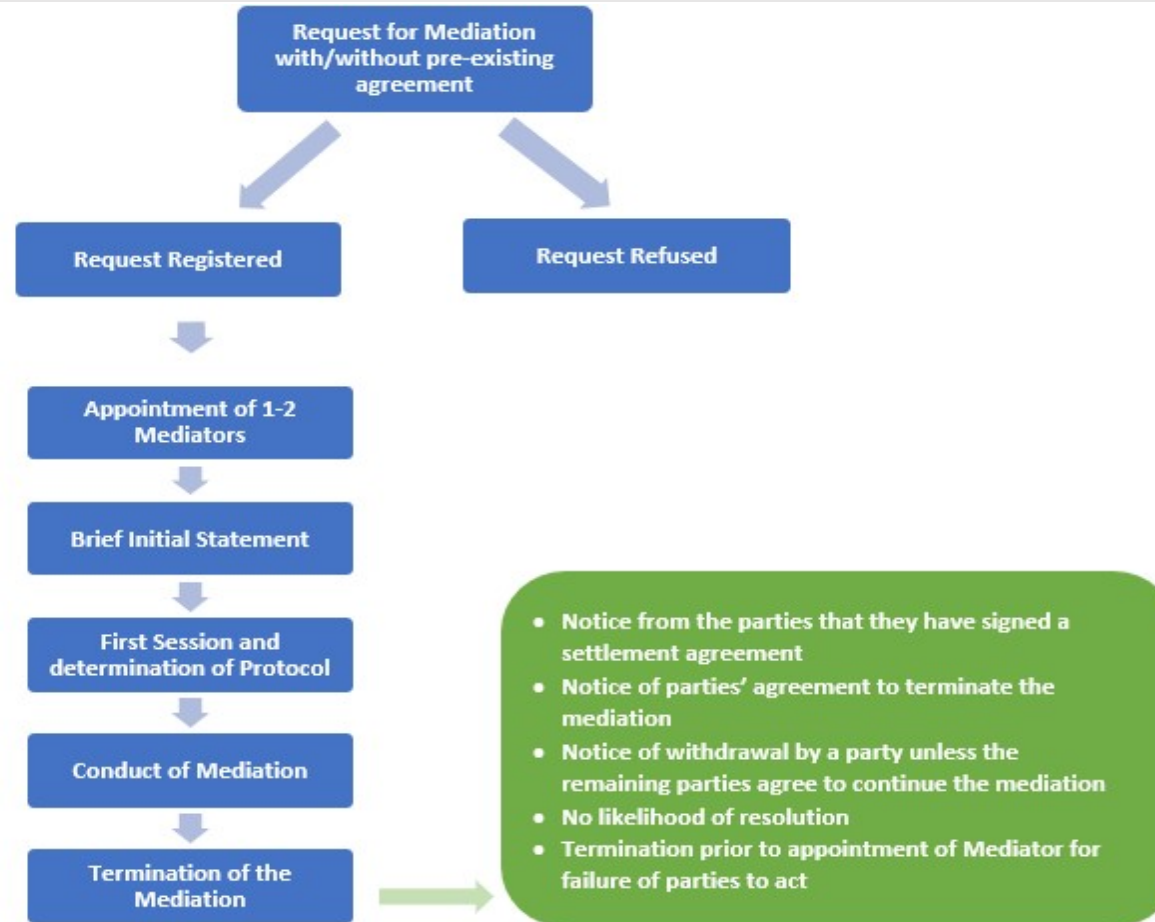
(2) MR 6: CONSENT ABSENT PRIOR PARTY AGREEMENT

- Request for mediation includes an offer to mediate
- SG transmits the offer to the other party
- Other party can accept the offer and continue to mediation
- If other party refuses or fails to accept, no further action is taken on mediation

ICSID Mediation – Scope (MR 2)

- The Secretariat is authorized to administer any mediation that relates to an investment, involves a State or an REIO, and which the parties consent in writing to submit to ICSID.
- Provides States and investors with broad access to investment mediation facilities without the limitations applicable to Convention or Additional Facility arbitration and conciliation proceedings.

ICSID Mediation – Process Overview



ICSID Mediation – General Provisions

Costs (MR 9)

- Unless parties agree otherwise, the costs of the mediation are borne equally by the parties and each party to bear its own costs and expenses

Confidentiality (MR 10)

- All information relating to the mediation, and all documents generated in or obtained during the mediation, shall be kept confidential, unless:
 - the parties agree otherwise
 - the information or document is independently available
 - disclosure is required by law

Without Prejudice Provision (MR 11)

- Any position taken, admissions or offers of settlement made, or views expressed by a party during the mediation is without prejudice to the legal positions it may take in any other proceeding

Enforcement of Mediated Resolution

- Embody in Award if corollary to ongoing arbitration (AR 43) – benefits of ICSID enforcement regime
- MR are aligned with formal requirements in Art. 4 of the Singapore Convention
 - Settlement needs to be in writing & signed
 - Evidence that the settlement agreement resulted from mediation (as defined by the Singapore Convention)

ICSID Mediation Activities in 2020

- Member State Consultations on MR – aiming to have Rules adopted as soon as possible
- Offering administration of investment mediations
- Mediation Capacity-building activities
 - Investor-State Mediator Training
 - Training for Government Officials with IFC
- Technical assistance workshops on dispute prevention and management
- Dissemination of information on investment mediation

Final Points

- Developing internal awareness about mediation and capacity to mediate
- Consider internal framework
 - Lead agency
 - Liability concerns
 - Authorizations needed
- Communications
 - Tie to attracting, retaining and expanding FDI

Thank you

Visit our website: www.worldbank.org/icsid

Follow us on Twitter: [@ICSID](https://twitter.com/ICSID)

Sign up to receive our monthly newsletter

ICSID

1818 H Street, NW

Washington, DC 20433, USA

Tel: +1 (202) 458-1534

Fax: +1 (202) 522-2615

Email: icsidsecretariat@worldbank.org