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THE ARBITRATION, MEDIATION
& DISPUTE BOARD CHAMBERS

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IMI Investor State Mediator Standards

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1. Understanding of Investor-State Issues

- As Investor-State Dispute Settlement (ISDS) rules and procedures under investment treaties are detailed and specific, mediation proceedings taking place before or in parallel to an ISDS procedure must be conducted with full understanding of a potential ISDS case.

- Investor-State mediators should therefore have a solid understanding of or familiarity with procedural and substantive issues that may arise in Investor-State dispute settlement proceedings. An Investor-State mediator should ideally be able to understand or be familiar with:
  - -international investment processes;
  - Financing mechanisms
  - Public international legal issues
  - International arbitration procedures;(e.g., ICSID and UNCITRAL rules and procedures) advisors or experts.

2. Experience in mediation and other dispute resolution processes

- The mediator should know how to assist the parties to:

- (1) Diagnose the dispute and its propensity to escalate;
- (2) Identify likely timing issues and deadlines;
- (3) Understand the need to ensure that each party is represented at the right level and has the power to make decisions;
- (4) Explain in detail the mediation process and the possible outcomes;
- (5) Convene and conduct the mediation process and guide the parties;
- (6) Foresee and address possible procedural issues and obstacles;
- (7) Understand the possible impact of various procedural options;
- (8) Deal with the inherent disparity between government officials representing the State entity and private parties.

3. Experience with different forms of negotiation, mediation and conciliation

- An Investor-State mediator should be:

- experienced in different forms of negotiation, mediation and conciliation and mediations as a sole or co-mediator, involving a State or a State entity and a private party.
- (S)he should be a trained, certified or accredited professional mediator, with strong intercultural and interpersonal skills and comfortable managing different types of mediation;
- willing to work with other mediators or dispute resolution experts as part of a team;
- able to understand how mediation can be used not only as part of a legal process, but also as part of a political and social process;
- able to bring in experts when needed;

3. (contd.) Experience with different forms of negotiation, mediation and conciliation

- able to assist the disputants in using mediation to design and carry out a process that can be adapted to legal, political, social and/or cultural considerations that may arise in the course of resolving an Investor-State disagreement;
- familiar with or able to learn and comply with relevant rules and guidelines applying to Investor-State mediation (e.g., the IBA rules on Investor-State mediation, codes of conduct and rules of ethics and relevant treaty-specific rules on Investor-State mediation);
- experienced in international negotiations, particularly settlement negotiations involving investment disputes or international disputes involving a sovereign state could present an alternative to the experience as mediator,
- Be independent and impartial and have the capacity to undertake the assignment

4. Experience with arbitration and adjudication

- It is also useful to have the following experience:
- different forms of arbitration and adjudication and have experience working as an arbitrator, tribunal secretary, party representative, advocate, legal counsel, or advisor in international commercial or Investor-State arbitrations;
- (S)he should be familiar with the differences between institutional and ad-hoc proceedings, civil-law and common-law approaches to dispute resolution, and ethical issues and guidelines affecting arbitrations (e.g., IBA guidelines for international arbitration);
- (S)he should also understand enforceability issues and UNCITRAL texts on the recognition and enforcement of arbitral awards, as well provisions regarding the possible use of consent awards or arbitral awards on agreed terms;
- previous knowledge or experience with Investor-State arbitrations, or arbitrations involving issues of international commerce, trade, public infrastructure, procurement, engineering, technology or public policy matters;
- (S)he should also have an ability to synthesize complex information and provide a structural framework for identifying any applicable norms;

5. Intercultural competency

- An Investor-State mediator should have strong and demonstrated competencies in dealing with cross-cultural situations:
- (S)he should understand culturally-shaped preferences and expectations, especially in international cross-border disputes and in different organisational cultures (e.g., governmental and business) in relation to decision-making approaches and attitudes towards time and information exchange.
- should be able to assist the parties to explicitly discuss and address procedural issues that may be implicit or assumed by the parties or by Investor-State arbitrators.
- should be able to appreciate nuances involved in different types of diplomacy, approaches to “cooling-off” periods, and how to convene, prepare for, coordinate, and conduct different types of meetings in different settings.

6. Other competencies

- An Investor-State mediator should ideally also be familiar with technologies that can assist the parties in communicating more effectively, reducing costs and saving time:
- such as online webinar or video-conferencing systems, data analysis tools (e.g., decision trees or mind maps), and project management skills;
- help the disputants to have a greater sense of predictability, and to better manage budgets and any deadlines that may exist.

Qualifications for Mediator

- In considering prospective IS mediators, the following qualifications may be taken into consideration:
- Experience as a commercial mediator;
- Mediation training and accreditation as a mediator by an internationally recognized organization;
- Experience in any form of dispute resolution proceedings involving States or State agencies or instrumentalities, in particular including investor-State disputes, peace negotiations, border disputes and trade disputes;
- Experience in any form of dispute resolution proceedings involving commercial entities, including particularly disputes relating to the substantive field of the investment at issue;
- Regional or international stature;
- Experience in dealing with governments;
- Experience as mediator in cross-cultural disputes;
- Experience in dealing with parties of the nationalities at issue;
- Ability to communicate with the parties in the languages in which they and/or the key participants in the mediation are most comfortable communicating; and
- The advisability of appointing a mediator of a nationality other than the nationalities of the parties.

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Thank you

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