UNCITRAL Working Group III
Virtual Pre-Intersessional Meeting

The Use of Mediation in ISDS

09 NOVEMBER, 2020

In the work of Working Group III of the United Nations Commission on International Trade Law (UNCITRAL) on the possible reform of investor-State dispute settlement (ISDS), the use of mediation in resolving ISDS disputes is a topic that is being studied.

Mediation, which emphasises harmony, can offer unique benefits, such as providing host jurisdictions and foreign investors with a high degree of autonomy, flexibility and creative, forward-looking and consensual settlement arrangements in resolving international investment disputes, preserving the long-term relationships between the disputing parties as well as saving costs and time. Mediation can also complement the use of investment arbitration to enrich the practice of ISDS.

In order to contribute to the discussion of UNCITRAL Working Group III on mediation, a virtual pre-intersessional meeting will be held on 9 November 2020 (GMT+8 time zone). World-renowned experts, including those from governments and international organisations, mediators, practitioners as well as academics will discuss various topical issues of investment mediation. These topical issues will cover how to overcome challenges to the use of mediation in ISDS, the design of mediation protocol in a multi-tiered dispute resolution process, the process design in hybrid models of arbitration and mediation, and the way forward for mediation as a reform option for ISDS.

Delegations of UNCITRAL Working Group III and those who are interested in the use of mediation in ISDS are most welcome to register to join the virtual pre-intersessional meeting.

CPD POINTS BEING APPLIED FOR

Enquiries: events@aail.org
Free Registration: https://events.aail.org/en/event/2020-UNCITRAL-WGIII/
## UNCITRAL Working Group III Virtual Pre-Intersessional Meeting

### The Use of Mediation in ISDS

#### Provisional Agenda

**9 Nov 2020**

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<tr>
<th>TIME (GMT+8)</th>
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<td><strong>09:00 - 09:15</strong></td>
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<td><strong>Opening Remarks</strong></td>
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|  | Ms Li Yongjie  
Director-General, Department of Treaty and Law, Ministry of Commerce of the People's Republic of China |
|  | **Opening Remarks** |
|  | Ms Anna Joubin-Bret  
Secretary, UNCITRAL |
| **09:15 - 10:35** | **SESSION 1 – OVERCOMING CHALLENGES TO THE USE OF MEDIATION IN ISDS** |
|  | **Moderator:** |
|  | Mr Shane Spelliscy  
Chair of UNCITRAL Working Group III; General Counsel and Director, Investment and Services Law, Global Affairs Canada |
|  | **Speakers:** |
|  | Mr Justin D’Agostino  
CEO, Herbert Smith Freehills  
**Topic:** Practitioner’s Perspective on Overcoming Challenges to the Greater Use of Mediation for ISDS |
|  | Ms Meg Kinneer  
Secretary General, ICSID  
**Topic:** ICSID’s Perspective on Facilitating the Greater Use of Conciliation and Mediation for ISDS |
|  | Professor Jaemin Lee  
Representative of the Korean Delegation; Professor, School of Law, Seoul National University  
**Topic:** Korea’s Experience in Dispute Prevention and Mediation for ISDS |
|  | Ms Mairée Clarisa Uri Bidegain  
Coordinator, Foreign Investment Arbitration Defense Program of the Chilean Ministry of Foreign Affairs  
**Topic:** Explore the Use of a Multilateral Instrument on ISDS Reform to Encourage the Use of Mediation |
|  | Q & A |
|  | Panel Discussion |
| **10:35 - 11:35** | **SESSION 2 – MULTI-TIERED DISPUTE RESOLUTION PROCESS (MEDIATION PROTOCOL)** |
|  | **Moderator:** |
|  | Dr Anthony Neoh QC SC JP  
Chairman, Asian Academy of International Law |
|  | **Speakers:** |
|  | Mr Wolf von Kumberg  
International Mediator and Arbitrator  
**Topic:** How to Overcome the Obstacles to the Integration of Mediation with Arbitration in a Multi-Tiered Dispute Resolution Process |
|  | Professor Jack J. Coe Jr.  
Professor of Law, Pepperdine University  
**Topic:** Considerations in the Design of Effective Mediation Protocols for International Investment Agreements |
|  | Mr Ronald Sun  
Head of Dispute Resolution (Asia), Addleshaw Goddard LLP  
**Topic:** Innovation of the Investment Mediation Rules under the CEPA Investment Agreement |
<p>|  | Q &amp; A |
|  | Panel Discussion |</p>
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<td><strong>16:00 - 17:35</strong></td>
<td><strong>SESSION 3 – HYBRID MODELS FOR RESOLVING INTERNATIONAL INVESTMENT DISPUTES</strong></td>
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| **Moderator:** | Ms Natalie Morris-Sharma  
Rapporteur of UNCITRAL Working Group III; Government Legal Counsel, Attorney-General's Chambers, Singapore |
| **Speakers:** | Mr Barton Legum  
Partner, Global Co-Chair, Litigation and Dispute Resolution, Dentons  
**Topic:** Legal issues in the Use of Hybrid Models of Arbitration and Mediation for ISDS  
Mr Francis Xavier SC  
President, Chartered Institute of Arbitrators  
**Topic:** The Use of Mandatory Mediation in a Hybrid Dispute Resolution Model  
Mr Cao Lijun  
Partner, Zhong Lun Law Firm  
**Topic:** Chinese Perspective and Experience on the Use of Hybrid Models  
Professor Hi-Taek Shin  
Emeritus Professor of Law, Seoul National University School of Law  
**Topic:** The Potential for Arbitrators to Also Act as Mediators for Facilitating Settlement of Disputes  
Ms Blanca Salas Ferrer  
Legal Officer, Directorate-General Trade, European Commission  
**Topic:** The European Union's Views on the Functioning of Mediation in the Context of a Multilateral Investment Court |
| **Q & A** | |
| **Panel Discussion** | |
| **17:35 - 18:40** | **SESSION 4 – WAY FORWARD FOR MEDIATION AS A REFORM OPTION FOR ISDS** |
| **Moderator:** | Ms Anna Joubin-Bret  
Secretary, UNCITRAL  
| **Speakers:** | Mr Alejandro Carballo-Leyda  
General Counsel and Head of Conflict Resolution Centre, International Energy Charter  
**Topic:** Tools for Promoting the Greater Use of Mediation by States in ISDS  
Mr Charlie Garnjana-Goonchorn  
Counsellor, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Thailand  
**Topic:** Provision of Mediation Services by an Advisory Centre on ISDS  
Mr Reetoo Dinay  
Principal State Counsel, Attorney-General's Office, Mauritius  
**Topic:** The Role of Capacity Building in the Way Forward for the Use of Mediation in ISDS by States  
| **Q & A** | |
| **Panel Discussion** | |
| **18:40 - 18:55** | **CLOSING REMARKS** |
| **Ms Teresa Cheng GBS SC JP** | Secretary for Justice, the Hong Kong Special Administrative Region of the People's Republic of China |