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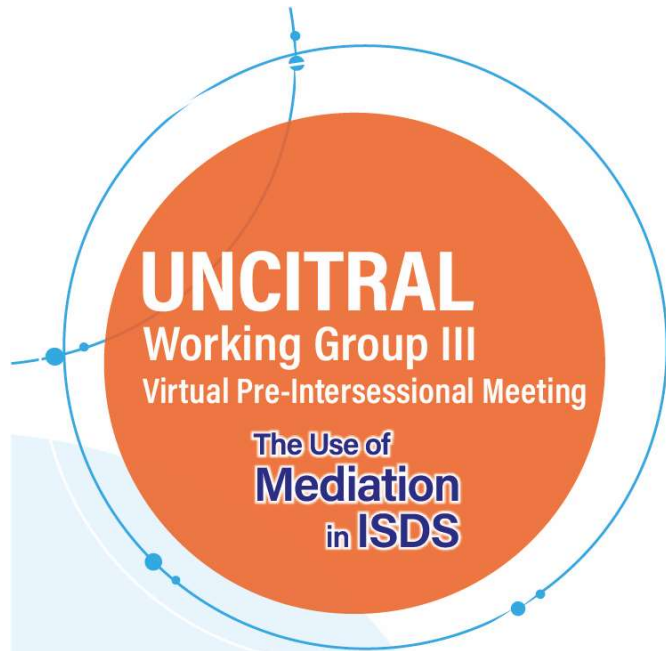
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Working Group III

Virtual Pre-Intersessional Meeting

The Use of
Mediation
in ISDS

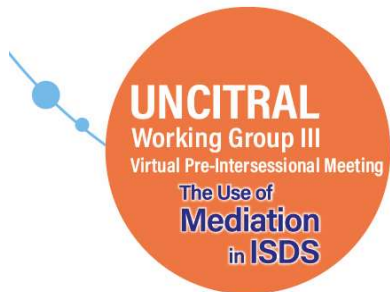


How to Overcome The Obstacles to the Integration of Mediation with Arbitration in a Multi-Tiered Dispute Resolution Process

Wolf von Kumberg
Arbitrator and Mediator
Int-Arb Arbitrators and Mediators
London and Washington DC

Mixed Mode Concepts

- Netherlands Model Bilateral Investment Agreement
- The Trans-Pacific Partnership (CPTPP)
- The CEPA Investment Treaty
- The Comprehensive Economic and Trade Agreement (CETA)
- The Agreement for the Termination of Bilateral Investment Treaties between the Member States of the EU - Article 9



Multi Tiered Provisions

Example: The Comprehensive and Economic Trade Agreement (CETA)

- Section F –Resolution of Investment Disputes between Investors and States
 - Article 8.19 Consultations - Required Step
 - Article 8.20 Mediation – Voluntary Step
 - Article 8.23 Submission of Claim to the Tribunal

How Intended to work

- Use of mediation in conjunction with arbitration
- Holistic dispute resolution system (consultation, mediation, arbitration)

Obstacles to Effective Application

- State barriers to mediation
- Historical development in ISDS towards arbitration
- System geared towards preparing for arbitration during cooling off periods

Institutional Developments

- IBA Investor State Mediation Rules
- ICSID - Mediation Rules
- ECT – Mediation Guide and Model Instrument on Management of Investment Disputes
- Singapore Convention



Integrating Processes – The Future

- Mediation as a tool for Foreign Direct Investment
- Process design considerations should include mediation with arbitration (sequential or concurrent)
- Med/Arb/Med considerations blending mediation with arbitration
- Continuing evolution of institutional frameworks