



UNCITRAL
Working Group III
on ISDS Reform



Forum for Further Preparatory Work
on Investment Mediation

Unlocking the Potential of Mediation Clauses Guidelines for Capacity Building

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Unlocking the Potential of Mediation Clauses

- Creating the right ecology to reduce disputes to minimum:
 - Ensure that proper domestic rights protection framework is in place (Rule of Law index is useful guide: <https://worldjusticeproject.org/rule-of-law-index/>).
 - Education of profession, legislature, judiciary and executive government in host countries to build an investment-friendly ecology.
 - Compliance with WTO standards: TRIPS (Trade-Related Aspects of Intellectual Property Rights) and TRIMS (Trade-Related Investment Measures), and international conventions: World Intellectual Property Organization Convention.
 - Adopt best 'aftercare' standards and practice: https://unctad.org/system/files/official-document/wir2021_en.pdf
- Designing Dispute Resolution System: (i) Consultation mechanism at local and national level; and (ii) Mediation Mechanism and supporting systems (consider CEPA mechanism and introducing a similar system in the HKSAR IPPA systems, particularly the ASEAN IPPA).

Guidelines for Capacity Building

- Develop Best Due Diligence Practice in cross-border M&A, public offerings or green field investment (local and national legal and commercial organisations, such as Chambers of Commerce).
- Develop Dispute Resolution Skills in profession: Ability to propose best path to resolution – identifying nature of dispute (private/public law issues), negotiation, mediation, or other paths – litigation or contract or investment arbitration.
- Develop Mediation Bodies or a group of mediation bodies.
- Develop seminars and training among regional development organisations, Shanghai BRICs Forum, Asian-African Legal Consultative Organization, APEC.
- Develop RCEP mechanism.
- Develop Diplomatic liaison with own country investors in investment host States.