

# Settling Investment Disputes under the ICSID Mediation Rules

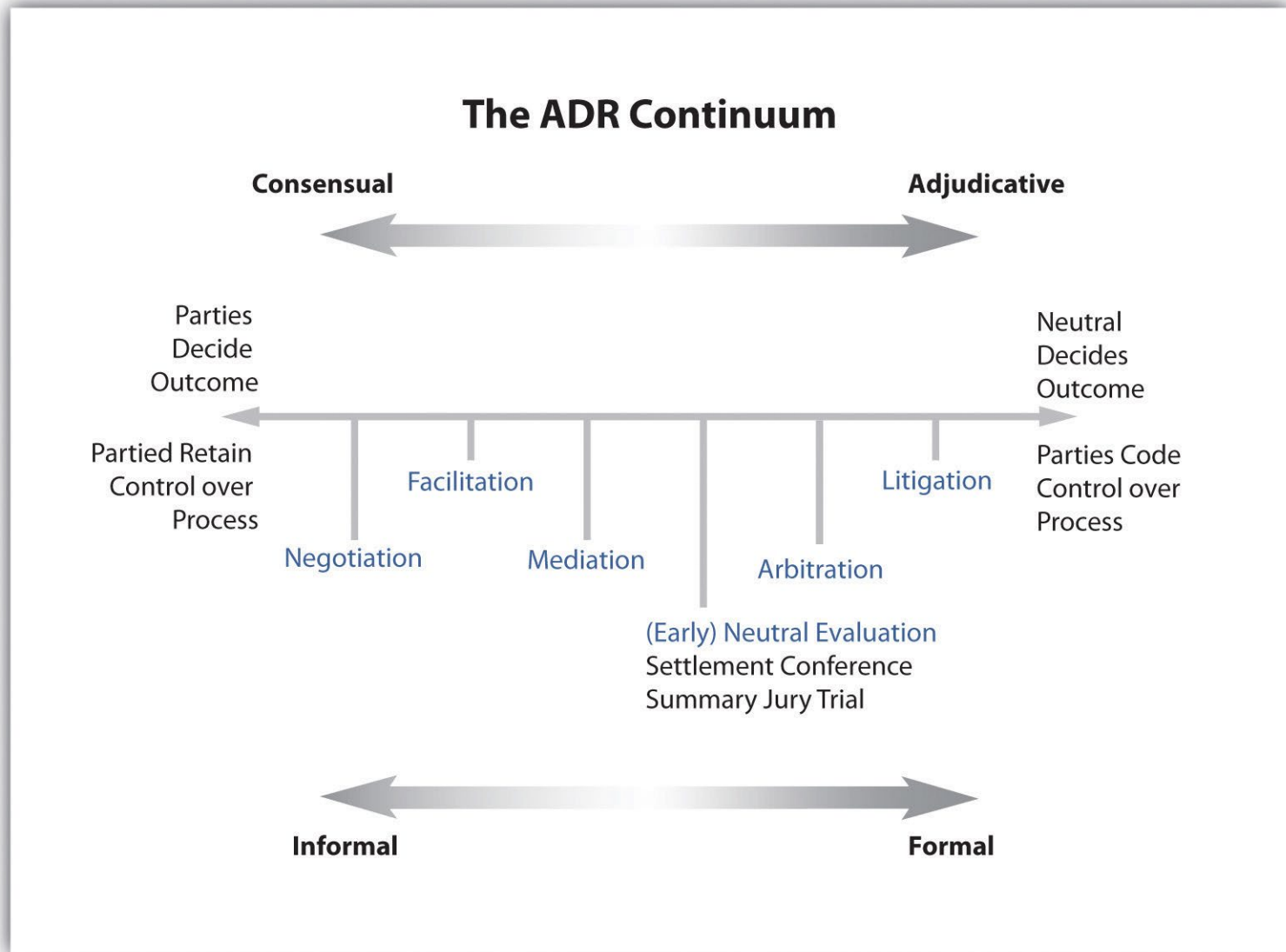
ICA CCI KR  
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*Francisco Abriani*  
*Legal Counsel, ICSID*



**ICSID**

**International Centre for  
Settlement of Investment Disputes**  
WORLD BANK GROUP



# What is Mediation?

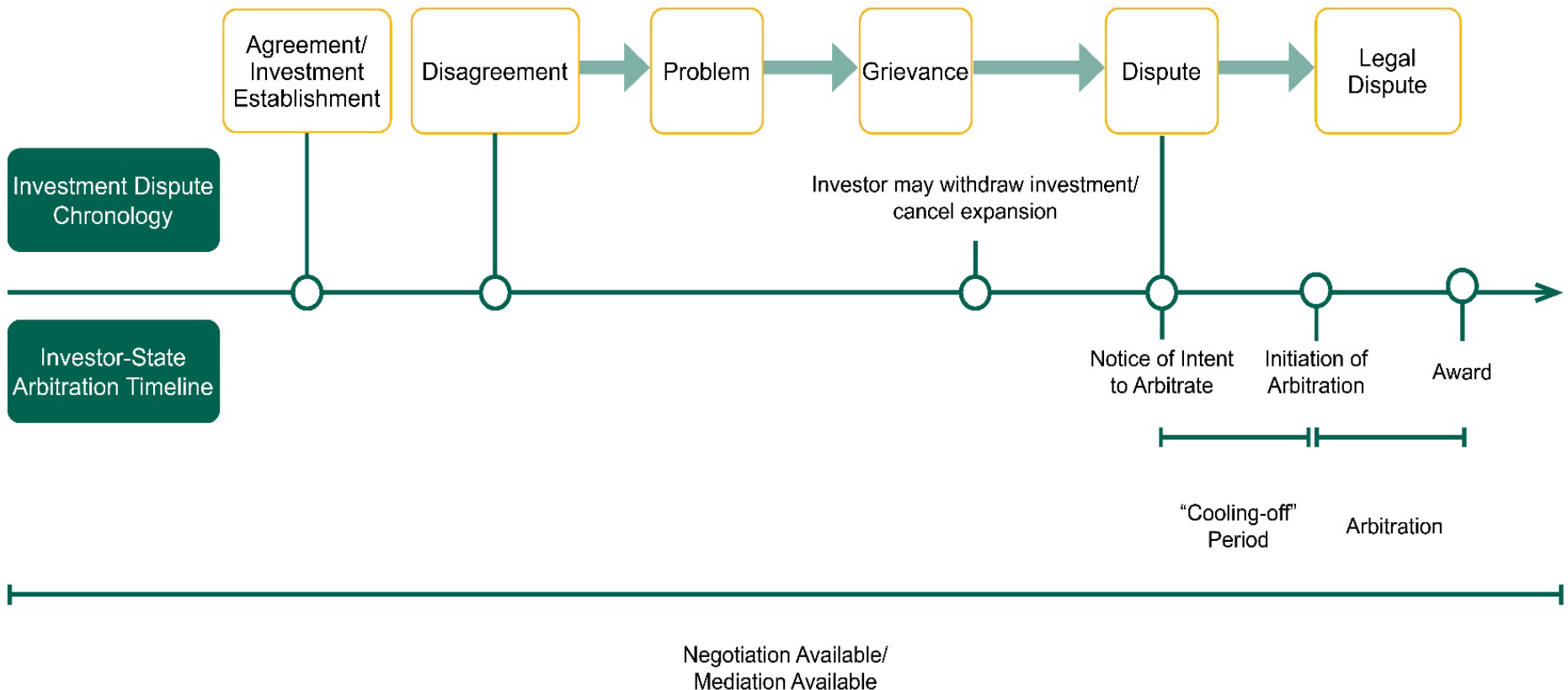
**Mediation** is a flexible process in which an independent and impartial person actively assists the parties in working towards a negotiated agreement to resolve a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.

Adopted from Organisation for Economic Co-operation and Development (OECD), International Finance Corporation (IFC) of the World Bank, and others.

**Investment mediation** is typically understood as a mediation that relates to an investment and involves a State or Regional Economic Integration Organization (REIO).

# When Can Mediation be Used?

## Investment Dispute Chronology and Availability of ISDS Processes

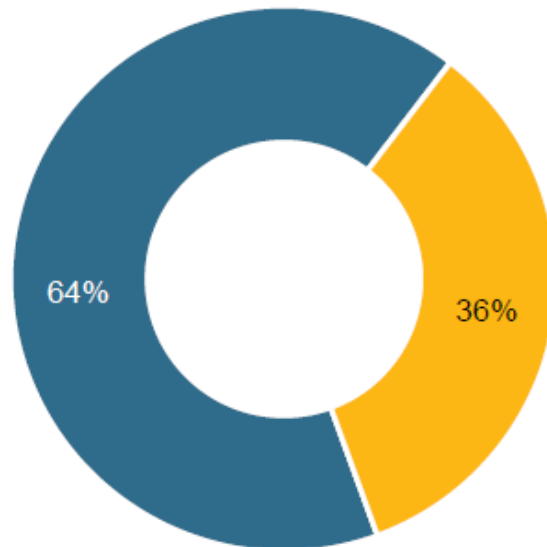




# ICSID & Mediation – Background

- ICSID Arbitration Statistics

## Arbitration Proceedings under the ICSID Convention and Additional Facility Rules – Outcomes



- Dispute decided by Tribunal  
(see charts 9a and 9b)
- Dispute settled or proceeding otherwise discontinued  
(see charts 9a and 9c)

## The ICSID Caseload – Statistics (Issue 2022-2)

# Why ICSID Mediation Rules?

The ICSID Mediation Rules are intended to:

- To provide States and investors with a neutral and reliable forum for facilitated negotiations
- To offer the parties to a dispute a mediation mechanism in relation to investment
- To provide a flexible process allowing for tailor-made solutions
- To allow the parties to settle their dispute in a more timely and cost-effective manner
- Reflect formal requirements for settlement agreements in the Singapore Convention.

ICSID is leading research on mediation. See the [Background Paper on Investment Mediation](#) and the [Overview of Investment Treaty Clauses on Mediation](#), available on the ICSID website.



## 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.



## Nature of ICSID Mediation

### **ICSID Mediation is entirely voluntary**

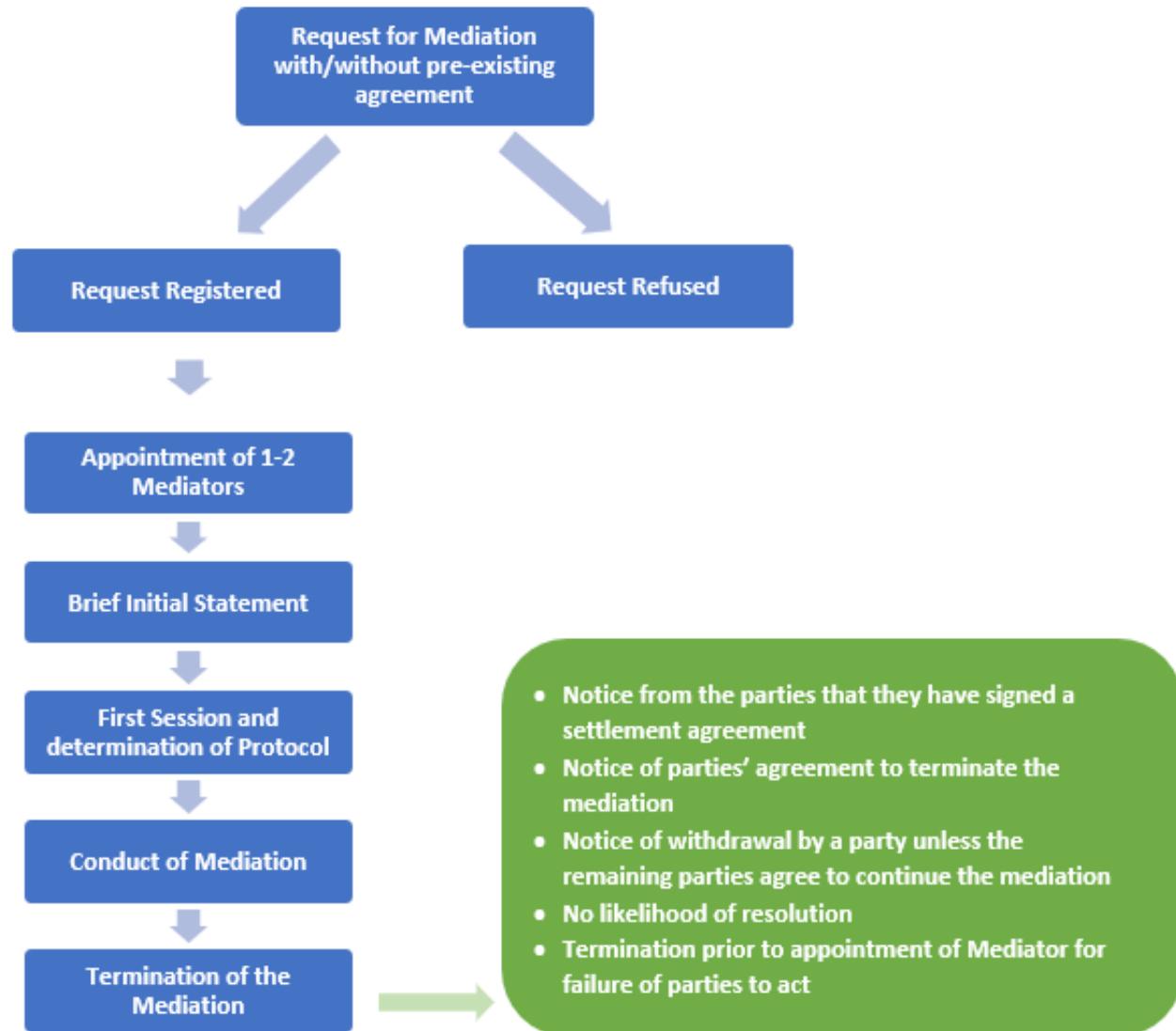
- Requires party consent at the outset & throughout the process
- Either party may unilaterally withdraw at any time (“*ongoing consent*”)
- Secretariat can assist with transmittal of offer to mediate



## ICSID Mediation & Conciliation – Differences

- ICSID mediation is more widely available than ICSID Convention or Additional Facility conciliation (*see* MR 2)
- No “preliminary objections” – mediation begins immediately
- No Three Member Commission
- No Report

# 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

# Thank you

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## **ICSID**

1818 H Street, NW

Washington, DC 20433, USA

Tel: +1 (202) 458-1534

Fax: +1 (202) 522-2615

Email: [icsidsecretariat@worldbank.org](mailto:icsidsecretariat@worldbank.org)