



# ReSolution in Brief

## Brazil signs the Singapore Convention on Mediation

Brazil signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "[Singapore Convention on Mediation](#)", at the United Nations Headquarters in New York on 4 June 2021. With its signature, Brazil becomes the fifty-fourth signatory to the treaty. This is one of the most successful multilateral treaties prepared by the United Nations Commission on International Trade Law ([UNCITRAL](#)). Brazil is a major commodity exporter, and the adoption of the new rules will bring more certainty to commercial relations between Brazil and parties in signatory nations.

## ICSID's new mediation rules

The International Centre for the Settlement of Investment Disputes ([ICSID](#)) released its latest working paper ([Working Paper 5](#)) on its comprehensive amendment of ICSID Convention and ICSID Additional Facility proceeding rules and regulations. This working paper also refines the proposed new rules for ICSID fact-finding and mediation. Working Paper 5 should be the final iteration of the rules. The rules allow parties to request mediation by agreement or unilaterally. The Secretary-

General will invite the other party to accept an offer to mediate if the request is initiated unilaterally. After the parties agree to mediate, the only requirement for the selection of a mediator is to be impartial and independent. The parties can determine the protocol for the mediation, such as the language of the mediation, the meeting place, next steps and the participants. The rules require the appointment of a party representative, who is authorised to negotiate and settle the dispute, at the first session. This is to ensure the mediation outcome is sustainable. If mediation is terminated, the mediator is required to refer to any confidentiality agreement the parties came to, in the notice of termination.

The current state of mediation in investment disputes depends on the underlying investment treaty's mediation provisions. These provisions are inconsistent across treaties. ICSID's formalisation of mediation rules and regulations will give states and parties more confidence in mediation and encourage the usage of mediation in investor-state disputes.

## Civil Justice Council: Compulsory ADR would be desirable

The [Civil Justice Council](#) recently published a report on the issues relating to compulsory Alternative Dispute Resolution ([ADR](#)). [The report](#)

concludes that the English and European Convention on Human Rights caselaw supports mandatory ADR, provided it is not unduly onerous and the parties can choose whether to settle or to proceed to trial. Mandatory ADR is desirable because it can help ease caseloads for the courts and, as the mediation process goes forward, parties often do reach a settlement despite some reluctance initially. The report also identified some factors that would contribute to a successful compulsory ADR scheme. These factors are:

1. Avoid disproportionately burdensome forms of ADR.
2. The presence of a skilled neutral can often be beneficial to a highly emotional dispute.
3. To build a party's confidence in the neutral requires systematic regulation.
4. Whether to encourage the parties to seek legal advice can have an effect on ADR engagement.
5. An early evaluation report can provide the parties with a realistic expectation; therefore, it is important to identify the appropriate stage to compel ADR.
6. A compulsory ADR process needs to be accompanied by sanctions for non-compliance.

Given the conclusion that compulsory ADR is lawful, further work on any new scheme of compulsory ADR will fall on the [Civil Procedure Rules Committee](#).

## New Zealand Arbitration Survey

How many disputes are dealt with by arbitration in New Zealand? How many people work as arbitrators? What kinds of cases do they decide? How could you possibly tell?

This survey is an attempt to answer these and other related questions about the practice of arbitration in New Zealand.

Are you an arbitrator working domestically in New Zealand?

We are asking all arbitrators to respond to our online survey to help us, collectively, to pull together meaningful information about the practice of arbitration in New Zealand between 2019 and 2020.

Not an arbitrator but been involved in an arbitration in this period? Please do reach out to the arbitral tribunal and let them know about the survey. The more arbitrators we have participating, the more meaningful the survey results will be for everyone.

To access the survey, please go to NZDRC's website: <https://www.nzdrc.co.nz/new-zealand-arbitration-survey/>

If you have any questions, please contact Natalia at [natalia.vila@nzdrc.co.nz](mailto:natalia.vila@nzdrc.co.nz).



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