

Checklist 4a – Advantages of Mediation versus International Arbitration

	<u>Mediation</u>	<u>Arbitration</u>
Time	Can be organized on short notice and typically lasts no more than a day	Measured in terms of months, if not years
Cost	Negligible or modest incremental cost	Substantial
Face-to-face meeting of decision makers	A fundamental part of the mediation process; often a requirement made by the mediator	Not required and rarely occurs
Confidentiality	All discussions with the other party and the mediator subject to mediation confidentiality, and may not be produced or used as evidence in arbitration or other legal proceedings	Not confidential as to admissions by either side in the course of the proceedings; proceedings confidential as to external parties (but results subject to public disclosure)
Relationship with the other party	Less harmful to commercial interests with opposing party than other forms of dispute resolution. Even if parties do not settle, willingness to mediate can preserve relations	As injurious to commercial relations as any other form of litigation
Ability to structure creative solutions	Provides the opportunity to reconcile overlapping interests the parties may have failed to recognize on their own, and structure settlement accordingly	Like judges, arbitrators can only award or reject what is claimed or counterclaimed, usually monetary sums

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