

**MAINLAND AND MACAO
CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT
Investment Agreement
Mediation Mechanism for Investment Disputes
Q&A**

1. What is Mediation Mechanism for Investment Disputes?

According to the requirements set out in Articles 19 and 20 of the [Investment Agreement](#), when an investor of one side encounters an investment dispute, it can seek a solution from the multiple means offered by the provisions of the Agreement, one of which is mediation. Following the signing of the Investment Agreement, the Mainland and Macao have made arrangements for the mediation system, and established the Mediation Mechanism for Investment Disputes, under which an investor of one side who is in an investment dispute with authorities or institutions of the other side may seek to resolve the dispute by means of mediation by following the principles and conditions detailed in the Mechanism.

For the sake of certainty, disputes that can only be resolved by lodging objections, administrative appeals or judicial appeals as required by the Administrative Procedure Code and the Administrative Litigation Code are not subject to the Mediation Mechanism for Investment Disputes.

2. What is included within the scope of investment disputes under the Investment Agreement?

According to the requirements set out in Articles 19 and 20 of the Investment Agreement, a dispute arising from a claim by an investor of one side that it or its covered investment has suffered losses or damages resulting from a breach by the authorities or institutions of the other side

of the obligations provided in the Agreement is an investment dispute within the scope of the Investment Agreement.

The abovementioned breach by the relevant authorities or institutions of the obligations are merely limited to Article 4 (Minimum Standard of Treatment), Article 5 (National Treatment), Article 6 (Most-Favoured Treatment), Article 7 (Performance Requirements), paragraph 1 of Article 8 (Senior Management, Boards of Directors and Entry of Personnel), paragraph 2 of Article 8 (Senior Management, Boards of Directors and Entry of Personnel), Article 11 (Expropriation), Article 12 (Compensation for Losses) and Article 14 (Transfer) of the Investment Agreement.

3. What means may an investor seek to resolve an investment dispute?

A Macao investor may seek to resolve by following the six means of resolving disputes set out in Article 19 (Dispute Settlement between a Macao Investor and the Mainland), including: amicable consultation, complaint coordination, notification and coordination of the Committee on Investment, administrative review, mediation and judicial proceedings.

A Mainland investor may seek to resolve by following the five means of resolving disputes set out in Article 20 (Dispute Settlement between a Mainland Investor and Macao), including: amicable consultation, complaint coordination, notification and coordination of the Committee on Investment, mediation and judicial proceedings.

About dispute between a Mainland investor and the Macao side

4. In the event a dispute arises between a Mainland investor and relevant Macao authorities or institutions from the Investment Agreement, under what circumstances can it be sought to be resolved by mediation?

If a Mainland investor hopes to resolve the dispute by means of mediation, it should refer to the provisions of the [Mediation Mechanism for Investment Disputes](#) for making its considerations. According to the relevant provisions, a disputing investor may submit an application to mediate an investment dispute only if the following conditions are met:

- Having requested amicable consultation with the disputing side for at least 1 month prior to applying for mediation.
- Completed and submitted to the Macao Economic and Technological Development Bureau (DSEDT) the [Letter of Intent to Request Assistance for Investment Dispute Mediation](#) and the required supporting documents (including: [Letter of Intent to Request Assistance for Investment Dispute Mediation – Annex](#), [proof of qualified investor](#) and document(s) evidencing the request for amicable consultation).
- The investor has waived its right to initiate or continue dispute settlement procedures under any agreement between any other party and the disputing side.
- Not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor or a covered investment of the investor has suffered loss or

damage thereby.

It is hereby reiterated that disputes that can only be resolved by lodging objections, administrative appeals or judicial appeals as required by the Administrative Procedure Code and the Administrative Litigation Code are not subject to the Mediation Mechanism for Investment Disputes.

5. Which institutions in Macao provide mediation services for investment disputes under the Investment Agreement?

The list of mediation institutions and, if any, the list of mediators of one side is published upon mutual recognition between the Mainland and Macao. Please [click here](#) to view the latest published list of Macao mediation institutions.

6. Are there any regulations for the process of mediation carried out in Macao?

Each mediation institution in the list of mediation institutions has formulated its own “[mediation rules](#)” for investment disputes under the Investment Agreement. The process of mediation will be carried out according to the rules established by the mediation institution to which the investment dispute was submitted for mediation.

7. What are the solutions available to be sought by a Mainland investor through mediation?

After reaching a settlement through mediation, all disputing parties may draw up and sign a mediation settlement agreement. The solutions available to the disputing parties under a mediation settlement agreement shall be limited to the following:

- (1) monetary compensation and any applicable interest;
- (2) restitution of property, or monetary compensation and any applicable interest in lieu of restitution of property;
- (3) other legitimate means of compensation agreed upon by all disputing parties.

About dispute between a Macao investor and the Mainland side

8. In the event a dispute arises between a Macao investor and relevant Mainland authorities or institutions from the Investment Agreement, under what circumstances can it be sought to be resolved by mediation?

If a Macao investor hopes to resolve a dispute by means of mediation, it should refer to the provisions of the [Mediation Mechanism for Investment Disputes](#) for making its considerations. According to the relevant provisions, a disputing investor may submit an application to mediate an investment dispute only if the following conditions are met:

- Having requested amicable consultation with the disputing side for at least 1 month prior to the submission of an investment dispute for mediation.

- Submitted a notice of consent (consent to mediation carried out in accordance with the procedures set out in the Investment Agreement and the Mediation Mechanism for Investment Disputes is required) together with its submission in relation to the investment dispute to be mediated, which are delivered to the Mainland mediation institution and disputing side.
- Submitted [proof establishing that it is a qualified investor](#) .
- The investor has waived its right to initiate or continue dispute settlement procedures under any agreement between any other party and the disputing side.
- Not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor or a covered investment of the investor has suffered loss or damage thereby.

9. Does a Macao investor seeking to resolve an investment dispute by mediation need to apply for a Macao Investor Certificate?

As mentioned in Question 8 above, one of the materials that a Macao investor is required to submit in order to lodge an application for mediation to the Mainland is [proof establishing that it is a qualified investor](#) . If the investor is a natural person, he or she is required to submit proof of permanent residence in Macao; in the case of a Macao enterprise, relevant materials shall be furnished under the following circumstances:

- (1) if the investor is investing in the Mainland in the form of

non-commercial presence, that investor shall submit proof of its constitution or organisation under the laws of Macao, or proof of being a branch of an entity constituted or organised under the laws of Macao;

(2)if the investor is investing in the Mainland in the form of commercial presence, and if the dispute is only related to an investment or a service that requires a Macao Investor Certificate or Macao Service Supplier Certificate for it to be made or provided in the Mainland as required by the Investment Agreement and Agreement on Trade in Services, that investor shall submit the Macao Investor Certificate or Macao Service Supplier Certificate; for circumstances other than the abovementioned, the investor investing in the Mainland in the form of commercial presence shall submit proof of its constitution or organisation under the laws of Macao, or proof of being a branch of an entity constituted or organised under the laws of Macao.

10.Which institutions in the Mainland provide mediation services for investment disputes under the Investment Agreement?

The list of mediation institutions and, if any, the list of mediators of one side is published upon mutual recognition between the Mainland and Macao. Please [click here](#) to view the latest published list of Mainland mediation institutions and mediators.

11.Are there any regulations for the process of mediation carried out in the Mainland?

Each mediation institution in the list of mediation institutions has formulated its own “[mediation rules](#)” for investment disputes under the Investment Agreement. The process of mediation will be carried out according to the rules established by the mediation institution to which the investment dispute was submitted for mediation.

12.What are the solutions available to be sought by a Macao investor through mediation?

Same with the answer to Question 7, after reaching a settlement through mediation, all disputing parties may draw up and sign a mediation settlement agreement. The solutions available to the disputing parties under a mediation settlement agreement shall be limited to the following:

- (1) monetary compensation and any applicable interest;
- (2) restitution of property, or monetary compensation and any applicable interest in lieu of restitution of property;
- (3) other legitimate means of compensation agreed upon by all disputing parties.