CLIFFORD
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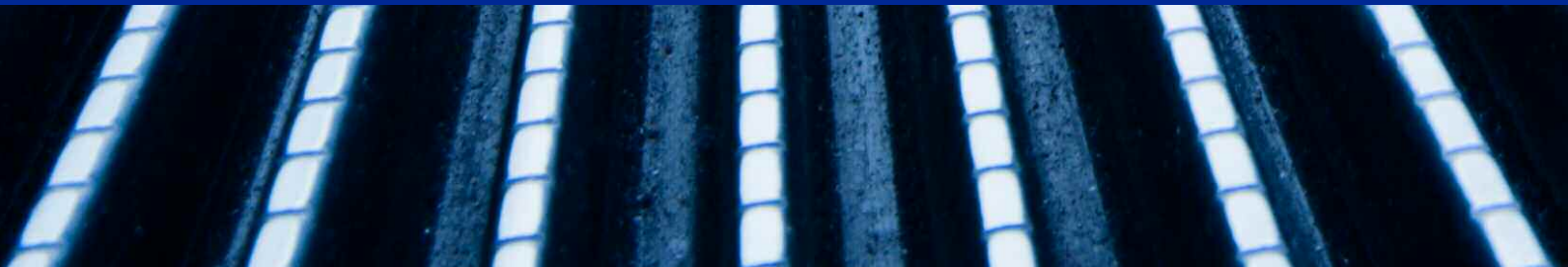
International Mediation Guide



International Mediation Guide

We have compiled this Mediation Guide with a view to providing a better understanding of the differences between jurisdictions in respect of mediation.

Mediation has been a hot topic in the world of dispute resolution for at least 20 years. The potential advantages of mediation to litigants are clear: a well-timed mediation can result in significant savings of time and cost, enabling the parties to focus on their core businesses as opposed to conflicts, and give them the control over the outcomes of their conflicts that they would not otherwise have had.

Although mediation is now well-established in some jurisdictions, where parties to litigation frequently resort to mediation with a view to resolving their disputes at any stage in the proceedings, it is still in a state of development in other jurisdictions, where the concept is not yet properly understood and accepted or the legal framework has not yet been put in place fully.

Clifford Chance' s international perspective means that we are particularly well-placed to guide our clients through differing mediation cultures in various jurisdictions around the world, ensuring that the extensive experience of our lawyers in jurisdictions where mediation is more established can be used for the benefit of clients involved in mediation in places where this process is still somewhat new.

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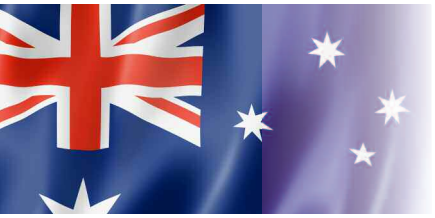
This Guide sets out the position in relation to each jurisdiction as at 1 January 2013.



Australia

Mediation culture

Mediation is an important and well-utilised form of alternative dispute resolution in Australia. Mediation is suitable in nearly all types of disputes, and can be used effectively in complex disputes where multiple parties are involved. Parties to litigation generally accept that mediation can be a useful process for resolving disputes on commercial terms and that it has the secondary benefit of parties learning about each other' s needs and interests.

Legal and regulatory framework

For disputes before the courts, the courts have the power to order compulsory mediation. However, this does not prevent the parties from agreeing to mediate their dispute without court intervention.

In 2011, legislation was introduced requiring applicants in proceedings in the Federal Court of Australia to file a "genuine steps statement" setting out the steps that have been taken to try to resolve the issues in dispute between the parties to the proceedings (or the reasons why no such steps have been taken). An attempt to mediate the dispute prior to commencing proceedings will likely be a highly relevant factor in any such statement.

Legislation applying similar requirements to some State Courts (e.g. Supreme Court of New South Wales) is not currently in force.

Infrastructure

Because the mediation culture is well-established, experienced mediators are widely available, including full-time professional mediators (often, for mediation of complex commercial disputes, retired judges). Australian National Mediator Standards were introduced in January 2008 for approval of mediators under a national accreditation scheme, as well as practice standards. Suitable venues for mediation are also widely available.

Judicial support

The courts have endorsed mediation as an integral part of their adjudicative system. It is very common for mediations to be ordered in commercial disputes, usually when the proceedings have reached a stage where the evidence of the parties is complete and all discovery has been given. Provision is often made in a procedural timetable to allow a mediation to take place.

An unreasonable failure to mediate may have adverse costs consequences.

Effectiveness and enforceability of contractual provision

There is no legislative basis for the enforcement of an agreement to mediate. Dispute resolution clauses are not specifically enforceable in equity due to the unacceptable level of court supervision this would require. However, the courts may stay or adjourn a proceeding until the requirements of a dispute resolution clause are fulfilled.

In general terms, mediation clauses must be sufficiently detailed to allow meaningful enforcement. To be effective in possibly avoiding the need for litigation, a mediation clause should be drafted in such a way that it constitutes a condition precedent to litigation.

Belgium

Mediation culture

Mediation was previously rather uncommon in Belgium. In recent years, however, various initiatives have been taken at different levels (parliament, bar associations, etc) to promote mediation, especially in the fields of family law, civil law and commercial law. However, most civil and commercial cases still reach trial without having attempted mediation.

Legal and regulatory framework

Since the law of 21 February 2005, the Judicial Code contains a new chapter on mediation. Mediation is possible in all matters where parties are entitled to settle.

The Courts cannot force parties to mediate and cannot impose costs sanctions for an unreasonable refusal to mediate.

Infrastructure

Because the mediation culture is a relatively recent development, the number of experienced mediators remains limited so far. The Federal Mediation Commission, instituted pursuant to the law of 21 February 2005, accredits mediation providers and training is provided by independent bodies often linked to universities and approved by the Commission.

Judicial support

The Courts will approve agreements reached with the assistance of accredited mediators, unless such agreements would be in violation of Belgian public order.

The Courts may invite the parties to use mediation and, if the parties accept, may stay proceedings or adjourn a hearing to allow mediation to take place.

Effectiveness and enforceability of contractual provision

When the contract contains a provision to mediate, the Courts will, if at least one of the parties requests it, stay proceedings until the mediation has come to an end.

The Courts may refuse a stay where one of the parties wishes to obtain urgent interim relief or has grounds for summary judgment.

Brazil[1]

Mediation culture

Mediation is only used in Brazil in a limited number of disputes between individuals, mostly in the field of family law. There are no known cases of mediation between corporations.

An alternative to mediation exists in the form of "conciliation", described below.

Legal and regulatory framework

There is no statute dealing with mediation; a proposal was submitted to Congress a few years ago but has not been adopted. Accordingly, there is no rule requiring parties to attempt mediation prior to filing a suit.

Infrastructure

A few entities purport to provide mediation services, but most do not have a high standing on the subject. An exception is the Center for Arbitration and Mediation (CAM), created and sponsored by the Brazil-Canada Chamber of Commerce of São Paulo, in existence for many years. CAM is today the most prestigious and respected entity in the field of arbitration in Brazil with a highly professional infrastructure; it has at present over 100 arbitrations in progress. In early 2012, CAM enacted a revised Regulation on Mediation, appointed a select number of individuals now available as mediators and will begin shortly a campaign to promote mediation.

Judicial support

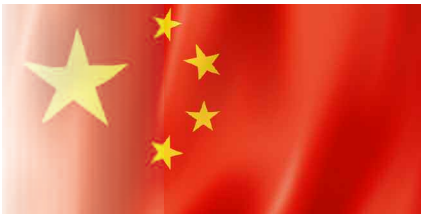
In court cases, some States have created a Conciliation Division – located in the same premises as the courts – to which the parties are referred after the complaint is filed and prior to the defendant filing the response. Any of the parties may refuse conciliation by simply not appearing for the conciliation session. The rate of settlements through conciliation is low.

The labour courts undertake an annual nationwide programme for conciliation, which lasts between one and two weeks, and there is a fair number of settlements of labour claims. There is a Conciliation Division at appellate level in some States, notably at the Court of Appeals of the State of São Paulo, where cases decided by a court of first instance are waiting to be reviewed on appeal. The Conciliation Division contacts the parties and offers the possibility of settlement through such conciliation at second instance. Participation is not mandatory. The rate of settlements in this appellate court varies between 10% and 20% of cases presented for conciliation.

Effectiveness and enforceability of contractual provision

A settlement reached in a mediation or in a conciliation is enforceable in a court. If the settlement was obtained in a court proceeding pursuant to mediation or conciliation, such settlement has to be approved by the court. A provision in an agreement that, prior to the institution of a court proceedings, the parties should resort to mediation may be enforced by the court, which will usually establish a deadline for conducting the mediation. If at a certain point during litigation, the parties agree to mediate, the proceedings will be stayed until the deadline for the mediation has run out, or the parties inform the court that despite their efforts, they could not reach a settlement.

1. Thanks to Paulo Bekin and Thomas Felsberg of Felsberg e Associados for contributing this section.



China (Mainland)

Mediation culture

The philosophy that favours resolving conflicts via a system of ritual and manners, rather than legal argument, is rooted in Chinese culture. Such tradition has impacted the development of the modern Chinese legal system, and underlined its contemporary approach to civil and commercial dispute resolution. In recent decades, various forms of mediation and alternative dispute resolution have been gaining popularity. Mediation is also regarded as an efficient way to ease the heavy caseload of the court. 67.3% of all civil claims commenced in China are either resolved through mediation or withdrawn, with mediation accounting for the bulk of the 67.3%.

Legal and regulatory framework (in brief)

There is no unified legislation for mediation in China. There are various laws and regulations containing provisions relating to different types of mediation, including commercial mediation, "people' s mediation" (conducted by village and residents' committees and primarily used in civil disputes and property disputes), mediation in connection with arbitration and court mediation.

Infrastructure

There are several bodies that provide commercial mediation services, including:

- the China Council for the Promotion of International Trade Mediation Center (the "CCPIT Centre"), which has 42 sub-centres in China and has been co-operating with organisations from over 10 countries to offer mediation services;
- some arbitration institutions (such as the Beijing Arbitration Commission and the Guangzhou Arbitration Commission), which have established a sub-division to provide mediation services; and
- the US-China Business Mediation Center, which was set up jointly by the CCPIT Centre and the United States Center for Public Resources Institute for Dispute Resolution to offer an efficient, effective and cost-saving alternative to arbitration and litigation for enterprises in China and the United States to settle disputes.

Judicial support

Chinese civil procedure rules provide that in any dispute where the court considers mediation to be appropriate, the court shall first attempt a mediation, unless the parties to the dispute reject mediation. The court can conduct mediation at different stages, such as before and after the hearing, provided that the parties voluntarily participate in the process.

If such a court-attempted mediation results in a settlement, the court shall (except in certain types of case) draw up a mediation statement. The mediation statement becomes legally effective once the parties have received it. Regarding mediation in the context of arbitration, a key feature in China is that the arbitrator and the mediator are often the same person, on the basis that an arbitrator knows the facts of the case well and this is a cost-effective option. Where the parties do not wish to have the mediation conducted by a member of the arbitral tribunal, it may be conducted through the China International Economic and Trade Arbitration Commission ("CIETAC").As to mediation in the context of arbitration, a key feature in China is that the arbitrator and the mediator are often the same person, on the basis that an arbitrator knows the facts of the case well and this is a cost effective option. Where the parties do not wish to have the mediation conducted by a member of the arbitral tribunal, it may be conducted through the China International Economic and Trade Arbitration Commission ("**CIETAC**").

Effectiveness and enforceability of contractual provision

- The rules applicable to enforcement of a judgment also apply to the enforcement of a mediation statement drawn up by the court.
- In the case of mediation by an arbitral tribunal: although the tribunal may prepare a mediation statement or arbitral award on the basis of a settlement reached in mediation-arbitration, the parties need to apply to the court for enforcement and may apply to the court to set aside the award under certain circumstances.
- A settlement reached in commercial mediation conducted by independent mediation centres only has the effect of an ordinary commercial contract, which is not directly enforceable: the parties first need to obtain a judgment for breach of the settlement agreement.
- If one of the parties refuses to comply with an agreement to refer a dispute to mediation, the other party may seek damages in relation to the costs of the mediation. In addition, if the mediation is agreed to as part of a pre-arbitration or (less commonly) pre-litigation process, breach of the agreement to mediate may also result in delay to the court or arbitration proceedings, particularly where the agreement allocates a specific period of time for the mediation to take place.

Czech Republic

Mediation culture
Although mediation does not have a long tradition in the Czech Republic, it is becoming increasingly popular, primarily in commercial matters.

Legal and regulatory framework (in brief)

The Czech Mediation Act, which came into force on 1 November 2012, provides a legal framework for mediation and also implements the EU Mediation Directive into Czech law.

Prior to the adoption of the Czech Mediation Act, there were few legal restrictions as to the type of dispute that could be referred to mediation or as to the identity of the mediator. The Czech Mediation Act introduces only minimal restrictions to this informal regime. The most important change introduced by the Czech Mediation Act is that, as with the commencement of Court proceedings, the commencement of the mediation that meets the criteria of the Czech Mediation Act results in the suspension of limitation periods.

Infrastructure

The Czech Mediation Act establishes a relatively flexible registration-based mechanism for mediator certification that is expected to create a network of competent mediators. The eligibility conditions are designed to encourage diversity of professions among the mediators, while attempting to ensure that mediators' qualifications are adequate. A university degree and absence of criminal record are the main prerequisites. The body vested with accreditation is either the Bar (in the event that the applicant is a Bar member) or the Department of Justice (in other cases). Since mediation is a fledgling profession in the Czech Republic, experienced mediators are not widely available.

Judicial support

As a general principle it is the judge' s role to lead the process towards an amicable resolution. The Czech Mediation Act invests the courts with the authority to order the parties to appear before a mediator and to stay proceedings. In addition, the parties are encouraged to opt for mediation by the fact that a considerable part (80%) of the court fees can be reimbursed if the dispute is resolved in an amicable manner. However, the parties to litigation may not be forced to negotiate, let alone to reach agreement under the mediation procedure

Effectiveness and enforceability of contractual provision

An agreement under which the parties to a dispute agree to enter into a mediation procedure is enforceable and effective, as with any other private contract. Parties are nevertheless free to litigate their dispute (whether in court or by arbitration) in parallel with the mediation procedure. Settlement reached through mediation does not have the status of a judgment or an arbitral award and will constitute merely a private law settlement agreement. Mediation is perceived as arising from the free will of each of its participants and can thus be avoided (with the exception of where the court orders the parties to appear before the mediator) or abandoned at any stage and any of the parties are free to resort to court proceedings or arbitration.

Under certain circumstances, if the parties submit the agreement to a court for its approval or if the parties execute the agreement as an enforceable agreement in the form of a deed, the agreement is directly enforceable.

England and Wales

Mediation culture

Mediation is very common in England and Wales in all types of disputes, especially commercial disputes. Parties to litigation generally accept that mediation can be a useful process for resolving disputes on commercial terms and saving time, as well as significant legal and other costs. Few commercial cases reach trial without having had an attempt at mediation.

Legal and regulatory framework

In commercial litigation, mediation arises from the freedom of the parties to settle their disputes by whatever means they choose. The Courts cannot force parties to mediate but the Civil Procedure Rules provide encouragement for parties to engage in mediation and the Courts can impose costs sanctions for an unreasonable refusal to mediate.

Those parts of the European Mediation Directive not already applied in English Law have been introduced in the Civil Procedure Rules.

Infrastructure

Because the mediation culture is well-established, experienced mediators are widely available, including full-time professional mediators. The Civil Mediation Council accredits mediation providers and training is provided by independent bodies, such as the Centre for Effective Dispute Resolution, which is the principal accreditation body for commercial mediators. Suitable venues for mediation are also widely available.

Judicial support

A refusal to accept another party' s proposal to enter into mediation (including before proceedings have commenced) can result in adverse costs consequences at the end of litigation, if the judge finds that it was unreasonable to refuse to mediate.

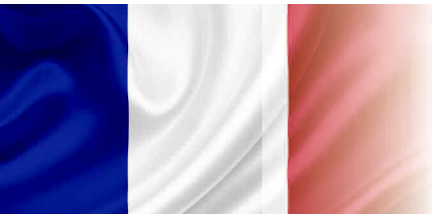
The Court may also invite parties to use mediation and may stay proceedings, adjourn a hearing or make provision in a procedural timetable to allow mediation to take place.

Effectiveness and enforceability of contractual provision

The effectiveness of any contractual provision to mediate depends on the extent to which it sets out a defined process.

The Court will not enforce a simple agreement to negotiate. However, where parties have agreed to submit any dispute between them to a defined mediation process before litigation can be commenced, the Court may stay any litigation commenced before the parties have followed the agreed process in order to allow them to mediate.

The stay is, however, subject to the Court' s discretion: it may refuse a stay where one of the parties wishes to obtain urgent interim relief or has grounds for summary judgment.



France

Mediation culture

For a long time, mediation has been confused with other alternative dispute resolution ("ADR") techniques in France, notably conciliation. The courts' mission is twofold: to resolve disputes in application of the law and to conciliate the parties whenever possible. In practice, due to lack of time and means, the courts prefer to resolve disputes themselves instead of promoting a negotiated solution.

Legal and regulatory framework

Mediation can be judicial or contractual.

Judicial mediation is found at Art. 131-1 to 131-15 of the Code of Civil Procedure ("**CCP**"). With the parties' consent, courts may appoint a mediator who shall hear the parties and attempt to help them resolve their dispute. Any information communicated during the mediation is confidential and cannot be used in subsequent proceedings without the parties' consent.

Contractual mediation results from the recent implementation of the EU Mediation Directive into French law. It is defined in the CCP as any process pursuant to which one party attempts or several parties attempt to resolve their dispute outside of the courts with the assistance of a mediator chosen by them. The mediation is confidential. The mediator must perform his/her duties with impartiality, expertise and diligence.

Infrastructure

There is at least one mediation centre per region in France. The most prominent centre is the Paris Mediation and Arbitration Centre (*Centre de Médiation et d' Arbitrage de Paris* or *CMAP*). The International Chamber of Commerce ("ICC") provides international mediation services

In order to be accredited as mediators, candidates have to adhere to the 2008 Code of Conduct for Mediators enacted by the National Federation of Mediation Centers, which is based on the European Code of Conduct for Mediators of 2004. Under the Code, mediators must be properly qualified and trained.

Judicial support

The Courts may try to conciliate parties when they deem it appropriate. They have the power to propose a judicial mediation to the parties regarding the whole or part of a dispute. Judicial mediation, if accepted by the parties, does not trigger any stay of the proceedings. Judges may order any necessary measures and may terminate the mediation at any time.

Effectiveness and enforceability of contractual provision

According to French case law, amicable dispute resolution clauses are binding on the parties pursuant to their terms. Any claim submitted to the courts in breach of such clauses is therefore inadmissible.

Notwithstanding the above, case law considers that claims are still admissible if amicable attempts to resolve the dispute are commenced and concluded before the judge issues his/her ruling. Any settlement agreement reached following amicable discussions may be declared enforceable by the French courts. The test for enforceability in the case of mediation has not yet been clarified. However, legal scholars consider that settlements reached in mediation should be enforceable subject only to public policy.

Germany

Mediation culture

Mediation has been an accepted method of alternative dispute resolution since the mid-1990s. Since then there has been an increasing number of associations of mediators. The courts quickly acknowledged the efficiency of mediation and many courts designated trained judges to offer in-court mediation. However, a lack of market-transparency and a judicial framework impaired the standing of mediation in the public eye. These impairments have been cleared by the law to promote mediation and other forms of alternative dispute resolution of 26 July 2012 ("**Mediation Law**"). Hence, mediation is quickly gaining popularity.

Legal and regulatory framework

The Mediation Law provides a legal framework for mediation proceedings. It contains, *inter alia*, the following provisions:

- Every statement of claim submitted to a state court shall indicate whether or not the parties are open to mediation or alternative dispute resolution. This provision enhances awareness of mediation.
- Judges are to propose alternative ways of resolving the dispute. They may, for instance, suggest referring the case to (a) a (private) mediator or (b) a so-called "conciliation judge" (*Güterichter*), i.e. a judge who can use mediation techniques. The litigation is stayed during such conciliation or mediation proceedings and the statute of limitation is suspended.
- To obtain the title of "certified mediator", candidates have to pass tests and extensive training (120 hours). The concept of the "certified mediator" facilitates transparency for laymen and ensures quality standards.
- Court fees are reduced or dispensed with the event of successful mediation.
- Mediators have a statutory obligation of secrecy.

Infrastructure

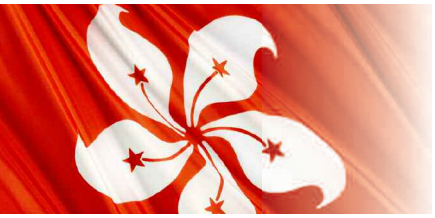
There are numerous mediation associations, such as the local Chambers of Commerce (*Industrie- und Handelskammern*) and the Federal Association of Mediators (*Bundesverband Mediation*) providing codes of procedure for mediation proceedings and offering assistance in finding the right mediator for the case. Arbitration institutions such as the German Institution for Arbitration (DIS) also offer such services.

Judicial support

The state courts are very supportive of mediation. They take seriously their duty to make the parties aware of mediation and other means of alternative dispute resolution and almost always suggest mediation when it comes to more complex cases. The court system suffers from an increasing case overload in many districts. Referring a case to mediation is a means of relieving this situation. Furthermore, many judges, especially younger ones, truly believe in mediation and make an effort to convince the parties to at least try to find a solution through mediation.

Effectiveness and enforceability of contractual provision

If a contract contains a so-called mediation clause, stating that mediation proceedings are to be initiated before litigation, a claim with a state court is inadmissible if the parties have not abided by such clause and mediation has not taken place. Any settlement agreement reached during mediation or other forms of dispute resolution can be rendered enforceable by way of recording the settlement before a court or a notary public.



Hong Kong (China)

Mediation culture

Mediation has been established in Hong Kong since 1994 when the HK Mediation Council (under the Hong Kong International Arbitration Centre) was set up. It has proven to be very successful in resolving all types of dispute, especially commercial and civil disputes. Mediation is also part of the arbitral process. Parties to litigation and arbitration are starting to accept that mediation can be a useful process for resolving disputes on commercial terms and saving time, as well as significant legal and other costs.

Legal and regulatory framework

Mediation is not compulsory in Hong Kong but the recent Civil Justice Reform (CJR) regime (now imposed under the revised Rules of the High Court (Hong Kong)) specifically provides for the facilitation of settlement of disputes and therefore parties are encouraged to engage in alternative dispute resolution, including mediation, if the Court considers it appropriate. Mediation sessions are conducted by independent mediators appointed by the parties. Practice Direction 31 on Mediation (PD 31) (which came into effect in 2010) applies to all civil proceedings in the District and Court of First Instance Courts which have begun by writ (with some exceptions). PD 31 is aimed at assisting the Court to discharge its duty as regards ADR including mediation. Parties are required to file a Mediation Certificate signed by each party and its solicitors which states whether or not a party is willing to attempt mediation. The Mediation Ordinance (June 2012) came into force on 1 January 2013. The Mediation Ordinance applies retrospectively to any mediation conducted in Hong Kong or to mediation agreements which provide that the Mediation Ordinance or Hong Kong law applies.

Infrastructure

Although a mediation culture is still developing, there is a body of experienced mediators available. Some of these are persons qualified through the Hong Kong Mediation Centre and others are practising lawyers, also qualified as mediators, in the jurisdiction. There is a proposal for a single accreditation body in Hong Kong, the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") which will be governed by a council made up of representatives of key mediation service providers in Hong Kong. Suitable venues for mediation are available.

Judicial support

Under the courts' case management powers, the Courts are required to encourage parties to use alternative dispute resolution, including mediation, and may stay proceedings, adjourn a hearing or make provision in a procedural timetable to allow mediation to take place. Through case law and PD 31, the Courts have repeatedly sent out strong messages to the legal profession on the importance of mediation. PD 31 makes it clear that an unreasonable failure to engage in mediation could entail adverse costs consequences. The Courts have imposed such adverse costs orders in some cases.

Effectiveness and enforceability of contractual provision

The effectiveness of any contractual provision to mediate depends on the extent to which it sets out a defined process. The courts will not enforce a simple agreement to negotiate. However, where parties have agreed to submit any dispute between them to a defined mediation process before litigation can be commenced, the courts may stay any litigation commenced (subject to the courts discretion) before the parties have followed the agreed process in order to allow them to mediate, fix timetables or otherwise control the progress of the case, including dealing with the case without the parties needing to attend at court.

Italy

Mediation culture

In Italy, recourse to mediation to resolve disputes is uncommon.

Not many agreements are reached through mediation and there are still many cases in which a party fails to appear. Usually, the mediation procedure does not follow any particular formalities and is concluded within two meetings.

Legal and regulatory framework

Legislation making mediation mandatory for certain types of dispute and preventing the case from proceeding until mediation had been attempted was struck down by the Italian Constitutional Court on 24 October 2012. Mediation will probably be reconsidered in the context of a wider reform of the justice system in Italy.

The parties may in any case agree to submit their dispute to a mediator for resolution after the dispute has arisen or at the invitation of the court or, earlier, by inserting an alternative dispute resolution clause in an agreement, provided that the dispute concerns claims/rights which can be freely disposed of by the relevant parties, such as property rights. In those cases, if the parties have provided for ADR and the claim comes before the Court without mediation having been attempted, the defendant may file an objection. Thereafter the judge will grant the parties time to conduct the mediation process and schedule a new hearing for four months later (four months being the maximum duration of the mediation).

Infrastructure

There is a register held by the Justice Minister of bodies approved to conduct mediation, which may be composed of public and private entities. In addition, Consob' s Chamber for ADR, which deals with financial and bank disputes and the Chamber of Arbitration of Milan (*Camera Arbitrale di Milano*), which deals with commercial disputes, provide mediation support.

Judicial support

After having considered the type of the claim, the parties and their behaviour, the Court (both first instance and appeal) may invite the parties to attempt mediation. Such invitation can take place only if the proceedings have not yet reached trial.

If the parties accept this invitation – the invitation is not mandatory – the Court will schedule a new hearing for four months later.

Effectiveness and enforceability of contractual provision

As stated above, if the parties have provided for ADR and the claim comes before the Court without mediation having been attempted, the defendant may file an objection. Thereafter the judge will grant the parties time to attempt mediation and list a new hearing for four months later.

Any settlement agreement reached following amicable discussions may be declared enforceable by the Italian courts. Settlements reached in mediation are enforceable subject only to public policy.

Japan

Mediation culture

The Japanese culture is known for its desire for harmony, so it is not surprising that mediation plays a role in dispute resolution in Japan and that court-ordered mediation is commonplace. However, private mediation of commercial disputes is not mainstream and mediation of cross-border disputes is still in its infancy.

Legal and regulatory framework

In the context of commercial disputes, the judiciary' s involvement in mediating disputes is witnessed in two ways:

(a) Settlement attempts by the court during the litigation process: Japan' s Civil Procedure Code empowers the court, at any stage of litigation proceedings, to attempt to arrange a settlement or have an authorised judge or commissioned judge attempt to arrange a settlement of the parties' dispute. This power is well used in the Japanese litigation process and it is thought that approximately one-third of all commercial cases before non-appellate courts are settled via this judge-led settlement process.

(b) Court-ordered mediation: The Civil Mediation Act (Act No. 222 of 1951) provides for a court-ordered mediation system. Prior to commencing litigation, a party may apply to the court to have a civil suit mediated by a panel (known as a "Mediation Board") designated by the court. The Act also empowers a judge to refer cases to mediation under this system but this power is not exercised frequently. Court-ordered mediation is used frequently and in 2011, 74,895 court-ordered mediations were commenced, 78,210 were completed and 11,935 were ongoing. In 2007, the Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004) came into force. The purpose of the Act is to help promote the use of private mediation for the resolution of disputes by, amongst other things, creating a certification system for mediators and to create special rules suspending limitation periods while a dispute is being mediated. Since the Act came into force, numerous organisations have been certified by the Ministry of Justice to provide mediation services (including the Japan Commercial Arbitration Association (the "**JCCA**").

Infrastructure

Court-ordered commercial mediation: a "Mediation Board", generally consisting of one chief mediator and two other mediators is appointed by the court. The chief mediator is either a judge or a part-time judicial officer and the two other mediators are lay persons with requisite professional knowledge and experience relating to the particular topic in dispute. The venue for a mediation is provided through the court system. International commercial mediation through the JCAA: if no mediator is appointed by the parties, the JCAA will appoint a mediator. The JCAA has its own mediation rules and will provide a venue for proceedings.

Judicial support

Court-ordered commercial mediation: certain provisions of general civil litigation procedure are also applicable to court-ordered mediation procedure, such as standard evidence collection procedures. International commercial mediation through the JCAA: since this procedure is wholly distinct from the courts, there is no available judicial support.

Effectiveness and enforceability of contractual provision

Generally speaking, even where parties have a contractual provision to mediate, a Japanese court is not empowered to stay litigation proceedings and force the parties to mediate.

Luxembourg

Mediation culture

Mediation has become, over the last few years, more common in Luxembourg but only in family disputes and in small criminal matters. Mediation is considered as being quicker, less expensive and more confidential than the ordinary judicial proceedings.

On 24 February 2012 a specific law on mediation in civil and commercial matters (the "**Law**") was enacted.

It is expected that the Law (which, in particular, has granted to the court the possibility to invite the parties to mediate, and which envisages supervision of the procedural timetable under certain conditions during the mediation) may render mediation more attractive in civil and commercial matters.

Legal and regulatory framework

The Law foresees that a mediation can be the result of an agreement reached between the parties in dispute. The parties may, however, also be invited by the court to mediate, although the court cannot force the parties to do so.

An important incentive in this respect is that the Law provides that during the mediation the procedural timetable is suspended.

Infrastructure

After the Law came into force, the Luxembourg Bar Association created, together with the Chamber of Commerce and the *Chambre des Métiers*, the "*Centre de Médiation Civile et Commerciale*", which is a non-profit organisation, whose purpose is to promote the mediation and to which private persons and companies may revert if they wish to submit a litigation to mediation. The "*Centre de Médiation Civile et Commerciale*" will appoint mediators (unless the parties have already chosen the mediators). It has also implemented an internal regulation on mediation (a rather short one).

Judicial support

The court may invite the parties to use mediation and may stay proceedings.

Effectiveness and enforceability of contractual provision

The Law provides that where the parties have included in their contract a mediation clause, the court may, on request of one of the parties, stay any litigation commenced until the parties have followed the agreed process in order to allow them to mediate.

This stay will end when one of the parties informs the court that the mediation has ended (either because an agreement was reached or because there was no possibility to reach an agreement). However, even in the presence of a contractual mediation clause, the parties may at any time apply in court for provisional and conservatory measures. Finally, where an agreement is reached, the parties may submit their agreement to the court in order to have it declared enforceable, i.e. to give to the agreement the same value as a judgment.

Morocco

Mediation culture

Mediation is a form of dispute resolution deeply rooted in Moroccan culture and tradition. Historically, commercial disputes between traders and craftsmen have been resolved with the help of provost-marshals, called "*amin*" in Arabic. In general, "*amin*" refers to a person with trade experience, chosen among traders of a city or *medina*, whose role was to assist artisans in their disputes and help them with reaching agreements. However, mediation in the modern understanding of the term is today rather rare in Morocco. Parties to a contract still largely prefer to have recourse to national courts and, less frequently, to arbitration for commercial disputes. Finally, economic operators are still insufficiently informed on the advantages of mediation and lack confidence in the process as such.

Legal and regulatory framework

On 8 December 2007, the Moroccan legislature enacted a law dealing with contractual mediation. This law provides that parties may agree (in a mediation clause or, if litigation has already begun, in an ad hoc agreement to mediate upon the nomination of a mediator who will help them settle their dispute. The settlement is treated as a new contract and is therefore entirely governed by the Moroccan *Dahir* (Royal Decree) of Obligations and Contracts. Currently, a draft of a new law on judicial mediation is awaiting review.

Infrastructure

Although there is not much call for mediators in Morocco, since the 2007 law, however, around 200 professionals have already been trained and educated in mediation law and techniques. The training of these experts has been mainly provided by foreign institutions. There are also domestic bodies, such as the Euro-Mediterranean Center for Mediation and Arbitration (CEMA), which aims to promote mediation culture and spread information among economic operators (especially small and medium-sized enterprises) regarding the advantages of mediation. The CEMA also keeps a list of potential mediators and participates in their training, in partnership with foreign bodies such as the International Finance Corporation.

Judicial support

The settlement agreement reached by the parties following a mediation process has to be signed both by the parties and the mediator. If in a language other than Arabic, the courts will not order its enforcement unless it is translated. The agreement is treated as having the binding authority of a court decision. Parties execute it voluntarily but, in the event of a refusal to perform by one of them, the President of the court having territorial jurisdiction (usually the commerce tribunal) can enforce the settlement. The courts will not, in practice, invite parties to mediate. Upon request by a party, the courts must decline jurisdiction if the mediation process is pending.

Effectiveness and enforceability of contractual provision

Any contractual provision to mediate has to be in writing and is considered separate and autonomous from the main contract. It must appear in the main contract, or, in a document referring to it, and either nominate a mediator or set out a procedure for nomination. An ad hoc agreement to mediate must set out the subject matter of the mediation and nominate the mediator or provide for a nomination procedure. If a party commences judicial proceedings on a matter on which it had previously agreed to mediate, the court will declare the action inadmissible upon request of the other party until the end of the mediation procedure or termination of the mediation agreement. The court will also declare its lack of jurisdiction if the parties fail to nominate a mediator. In this case the court will also order the petitioning party to initiate mediation within a specified period of time, or the mediation agreement will be rendered null and void.

Netherlands

Mediation culture

Although large multinationals, including some major Dutch corporations, have opted for mediation wherever possible for some time, until recently there has been little interest in mediation and mediators often mediated alongside their regular jobs. This is changing. In 1999 the Department of Justice (*Ministerie van Justitie*) published a policy letter with plans to stimulate the use of alternative dispute resolution. Mediation is increasingly being used in commercial, environmental, tax and even criminal cases.

The Dutch Mediation Institute (*Nederlands Mediation Instituut*, or "**NMI**") has registered an increased amount of mediations since 2005.

Legal and regulatory framework

There is no specific provision for mediation in Dutch law. The EU Mediation Directive is in the process of being implemented in the Netherlands.

The Netherlands has yet to implement the EU Mediation Directive. A draft bill is currently before the Senate. It will apply to cross-border mediations only. It includes provision for a stay of statutory time limits when mediation is commenced. Also the court will have a formal legal basis for recommending mediation to parties in all instances and at any stage of the proceedings. Another important provision is that a party involved in mediation has the right to claim exemption from testifying about the mediation. One of the main discussions is whether or not to impose quality restrictions on who can serve as mediator (in view of the legal privilege of mediators).

The NMI provides mediation models to create unity and clarity, with examples of provisions to guide the procedure and on confidentiality. There are other Dutch mediation organisations for specialist areas of law, which do not always use the NMI models.

Infrastructure

The NMI is the main mediation institute in the Netherlands. It provides model mediation rules, a list of accredited mediators, an accreditation and training procedure and serves as an expertise centre. The NMI can also assist in appointing a mediator. There are numerous other mediation institutes which focus on specific areas of law, such as P.R.I.M.E. Finance for disputes regarding complex financial products.

Currently, there are no specific requirements for becoming mediators. To become a registered NMI-mediator, specific requirements need to be fulfilled, including completing a training programme approved by the NMI.

The ACB Foundation, a conflict management research centre set up in 1998 to provide high-quality support in the field of conflict management and commercial mediation, acts as an expertise centre (performing research, advising, collecting statistical data) and a quality control reviewer of mediators. It also provides model mediation rules, a code of conduct and mediation clauses.

Judicial support

In civil cases before the district court, following an exchange of briefs, an informal hearing is often held (*comparitie*) during which the court can invite the parties to settle or mediate. The proposed new law on mediation will codify this practice and give the court the power to recommend mediation to parties.

Effectiveness and enforceability of contractual provision

Parties can draft contractual provisions agreeing to mediate before or after a dispute arises. Such clauses are in principle binding on the parties. Nonetheless, lower courts have ruled that even when parties have included a mediation clause in their agreement, they are still free to resort to courts or arbitration to solve their dispute directly, without having tried mediation.

If the parties reach a settlement in the mediation proceedings, such settlement agreement is binding. Parties can have a notary or court give legal recognition to the document, which makes the settlement agreement easier to enforce.

Poland

Mediation
Mediation is not very common in Poland. Parties to litigation are still reluctant to initiate mediation. Most mediations are initiated by the courts but the rate of successful mediations appears to be very low; although it is growing.

Legal and regulatory framework

For over five years, Poland has had provisions in its Code of Civil Procedure relating to mediation in civil disputes. These provisions implement the EU Mediation Directive.

There is also a general rule in Polish civil procedure that the parties to a dispute should aim to settle it.

There are two situations that trigger mediation: (i) the agreement of the parties and (ii) a court decision to refer the parties to mediation.

Mediation is conducted in a confidential manner; mediators are prohibited from testifying as a witness in cases involving facts revealed during mediation. The parties may however exempt the mediator from this ban. Also, settlement proposals or other statements made by a party during a mediation are not legally binding.

Infrastructure

Although mediation culture is not very well developed yet, there are quite a few organisations dealing with the promotion of mediation and who have lists of mediators available. These include the Mediation Centre at the Court of Arbitration of the Polish Chamber of Commerce, the Business Mediation Centre; the Mediation Centre at the Polish Confederation of Private Employers Lewiatan; and Centrum Mediacji Partners Polska, which specialises in all kinds of mediation.

In addition, the courts have their own lists of mediators and these are displayed on their websites.

Judicial support

A court may refer the parties to mediation, and in such a case mediation is still voluntary. If a party does not agree to mediation after a court referral, it will not suffer any negative consequences as far as the dispute is concerned. However, if a party agrees to mediate and afterwards abandons the mediation without a valid reason, this can result in an unfavourable court ruling on costs, regardless of the outcome of the case.

In its decision to refer the parties to mediation, a court will rule on the time period of the mediation. The court may refer the parties to mediation only once during the proceedings.

Effectiveness and enforceability of contractual provision

The court will refer the parties to mediation if the defendant raises an objection that the parties concluded a pre-trial agreement to mediate. Such objection has to be raised before litigation is engaged in. However, the existence of a contractual provision to mediate does not automatically prevent proceedings from being commenced.

A settlement reached before a mediator must be approved by the court, and then it is enforceable.

Qatar

Mediation culture

Qatar has only recently taken initiatives to develop and promote mediation as a form of dispute resolution. New developments for mediation are expected in the context of the draft law dated 13 June 2012, amending the Commercial and Civil Code (Law No. 13 of 1990) ("**Draft Law**"), which provides for mediation.

There are two main institutions in Qatar offering alternative dispute resolution services including mediation:

- the Qatar International Centre for Conciliation and Arbitration, a non-governmental body established in 2006 which offers arbitration and conciliation services; and
- On 11 January 2010, the Qatar Financial Centre Civil and Commercial Court ("**QFC**") and the Centre for Effective Dispute Resolution ("**CEDR**") announced a joint initiative offering courses in Mediator Skills Training. Since 2010 QFC has provided mediation services in partnership with CEDR.

Legal and regulatory framework

Currently, there is no statutory framework in Qatar for mediation. However, the Draft Law contains provisions concerning "reconciliation". According to the Draft Law, "reconciliation" covers any proceedings in which the parties are assisted by a neutral person to settle their dispute, including mediation. The Draft Law has not yet been enacted and the date of enactment is uncertain. Statutory provisions referring to mediation can also be found in the Labour Law (Law No.14 of 2004) and the Ministerial Decree No.4 of 2010, which deals with exchange-related transactions. The Regulations and Procedural Rules of the QFC include a mechanism for alternative dispute resolution, whereby the court will encourage parties to resolve their dispute by resorting to mediation (article 5.1). The court may at any time adjourn or stay proceedings so that parties can attempt to settle their dispute by mediation (article 25.1).

Infrastructure

The QFC has been working closely with the CEDR and a programme for training certified (accredited) mediators in both Arabic and English is now in place. Due to the collaboration with CEDR, access is provided to a worldwide directory of CEDR-trained and accredited mediators across all commercial specialist areas.

Judicial support

As mediation is still a relatively new concept in Qatar, it is still too early to comment on the extent of judicial support. However, by analogy, it is useful to note the potential judicial obstacles which arbitration has encountered, including an automatic right of appeal to the Qatari court unless it has been expressly excluded by both parties, and wide ranging rights of the courts to set aside awards.

Effectiveness and enforceability of contractual provision

There are no general provisions of Qatar Law concerning mediation; it is governed by contractual provisions agreed by the parties. The Civil Code (Law No. 22 of 2004) allows the parties an absolute right to freedom of contract and agree terms and conditions as long as they are not contrary to public policy or *contra bonos mores*. This position may change, as the Draft Law contains a whole section on reconciliation in civil and commercial matters, whether local or international.

Romania

Mediation culture

Mediation has a relatively short history in Romania and is therefore not yet accepted as a mainstream dispute resolution process in Romania.

Legal and regulatory framework

Law no. 192 of 16 May 2006 concerning the mediation and the organisation of the profession of mediator ("**Law no. 192/2006**"), establishes the main provisions concerning the profession of mediator and the organisation and practice of the activity of mediation. The Civil Procedure Code provides the legal framework and the main implications of mediation in a civil lawsuit. In addition to these regulations, the Mediation Council is a specific professional institution which develops and supervises the training programme, accredits mediators and elaborates the Code of Ethics and Professional Conduct of Mediators. The guidelines of the profession of mediator are generally in compliance with the European legislation, particularly the EU Mediation Directive.

Infrastructure

The Mediation Council accredits mediators and maintains the register of mediators, which is updated on a regular basis and available for public consultation on the website http://www.cmediere.ro/. There are more than 3,000 accredited mediators in Romania.

Judicial support

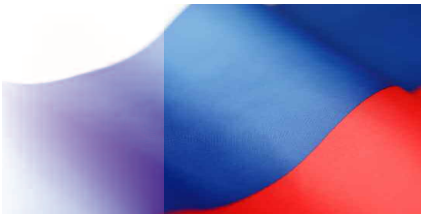
According to the provisions of the Civil Procedure Code, in litigation the judge must direct the procedure towards an amicable resolution.

Currently, there is no obligation on the parties to attempt mediation. However, any person who intends to commence litigation must attend a mandatory information session about mediation. From 1 February 2013, if there is no proof that the parties attended an information session, some cases (e.g. certain consumer protection law, family law, civil law (with values below RON 50,000 (approx. EUR 11,100)) and labour law cases) will be declared inadmissible by the court.

If the parties agree to mediate, court proceedings may be suspended upon the request of the parties until the mediator declares the mediation closed by having a settlement signed by the parties or by a failure of the negotiations. Time limits do not run while mediation is ongoing. In any case such stay would not be longer than three months from the signing of the mediation contract.

Effectiveness and enforceability of contractual provision

A settlement agreement reached through mediation is a valid contract between the parties, subject to the general rules of contract law. The parties may ask a court to uphold their agreement, rendering the agreement definitive and enforceable without other formalities. If a mediation process takes place during litigation and a settlement is reached by the parties, the court will issue a ruling taking notice of such settlement. Such court ruling is irrevocable and enforceable without other formalities.



The Russian Federation

Mediation culture

Mediation is a novel concept in Russian legislation. It remains an extremely rare method of dispute resolution. The reasons for this are a lack of trust in mediation due to its novelty, low awareness of the benefits of mediation among the general public, an unwillingness to share confidential information with mediators and an absence of well-known professional mediators.

Legal and regulatory framework

Until the enactment of the Law "On an Alternative Procedure for Dispute Resolution with the Participation of an Intermediary (Procedure for Mediation)" (the "**Law on Mediation**") in 2010, there was no special law on mediation in the Russian legal system. Parties to civil, family and employment disputes (with the exception of collective employment disputes) can now settle them through mediation. Disputes that may affect public interests or the rights and legitimate interests of persons who are not parties to a mediation agreement cannot be mediated. Parties may refer a dispute to mediation by concluding a mediation agreement before or after the dispute has arisen. Parties are also entitled to enter into such an agreement after the dispute has already been brought before a court or arbitral tribunal. The Law on Mediation does not provide for any compulsory legal grounds for mediation in cases where no agreement to mediate has been concluded. Where mediation is initiated after a statement of claim was filed, the parties are only entitled to engage professional mediators. The mediators are obliged to keep confidential all information obtained in the course of mediation.

Infrastructure

There are no widely-recognised and respected experienced mediators. At present, around 20 self-regulated organisations responsible for oversight in this sphere have been registered, but they are not very well-known to the general public. The Federal Government has recently adopted a training programme for mediators, who must pass a special examination to obtain the status of professional mediators.

Judicial support

Under Russian law the courts must inform the parties of the possibility of availing themselves of alternative methods of dispute resolution, including mediation. Where parties to a dispute have applied to a court for mediation, the court may postpone the hearing upon the parties' joint request. The decision to postpone is left to the discretion of the court.

Effectiveness and enforceability of contractual provision

The Law on Mediation provides that, if the parties to a mediation agreement have undertaken not to apply to the court or arbitral tribunal within the period designated for amicable settlement of their dispute, the court or arbitral tribunal will recognise this undertaking, except in cases where a party states that it is required to seek court relief to protect its rights. It is unclear what consequences are triggered by the breach of such obligation. It is possible that the court or tribunal may either stay proceedings until the claimant proves that it attempted to settle the case amicably, or, if the breach was established after the court accepted the statement of claim, it may dismiss the case without prejudice. A settlement reached in mediation which was initiated after a claim was filed with a court or arbitral tribunal can be approved by the court or arbitral tribunal as an amicable settlement. In the event of default, such settlement can be enforced by the court. If the settlement has not been submitted for court approval, in the event of default, the remedy is to bring a claim for breach of contract.

Singapore

Mediation culture

Mediation is an important part of the dispute resolution landscape in Singapore and is used for many purposes, including dispute settlement, conflict management and prevention, contract negotiation, and policy-making. Institutionalised mediation was established in Singapore during the 1990s and is now widely recognised as a useful tool for managing a cross section of disputes from family law to small claims to large complex commercial disputes.

Parties to litigation generally accept that mediation can be a useful process for resolving disputes on commercial terms, saving time as well as significant legal and other costs.

Legal and regulatory framework

In commercial litigation, mediation arises from the freedom of the parties to settle their disputes by whatever means they choose. The Courts cannot force parties to mediate but the Singapore Rules of Court provide for pre-trial conferences where the Court may encourage the parties to settle their dispute via negotiation. Further, when exercising its discretion as to costs, the Court will take into account the parties' conduct in relation to any attempt at resolving the dispute by mediation or any other means of dispute resolution.

Infrastructure

Mediation in Singapore is largely institutionalised. There are two main categories of mediation in Singapore: court-based mediation and private mediation. Court-based mediation takes place in the courts after parties have commenced litigation proceedings. This type of mediation is mainly carried out by the Subordinate Courts and is coordinated by the court mediation centre, also known as the Primary Dispute Resolution Centre. Court-based mediations are conducted by judges who are guided by the Model Standards of Practice for Court Mediators of the Subordinate Courts. Private mediation in Singapore is spearheaded and mainly carried out by the Singapore Mediation Centre (SMC), a non-profit organisation guaranteed by the Singapore Academy of Law. The SMC maintains its own panel of trained, experienced and multilingual mediators from a wide range of professions and cultural backgrounds, and has also developed its own system of mediator training and accreditation.

Judicial support

The Court may invite parties to use mediation and may stay proceedings, adjourn a hearing or make provision in a procedural timetable to allow mediation to take place. Generally, almost all cases at the Subordinate Courts undergo mediation. The Courts can impose costs sanctions for an unreasonable refusal to mediate.

Effectiveness and enforceability of contractual provision

The Courts may be willing to enforce a contractual provision to mediate provided that the obligation is sufficiently well-defined, for example by setting out the mediation procedures or rules, the appointment procedure of the mediator and/or the location of the mediation. The Courts have not been inclined to enforce terms requiring a less formal process such as "friendly negotiations" or "consultations". A defendant may apply to court to stay proceedings if an enforceable mediation clause has not been complied with, based on the Courts' inherent jurisdiction to stay proceedings brought in breach of agreement to resolve disputes by an alternative method.

Slovak Republic

Mediation culture

The Slovak Republic has incorporated mediation directly into its legal system. Act No. 420/2004 Coll. on mediation, as amended (the "**Slovak Mediation Act**"), effective as of 1 September 2004, provides a legal framework for mediation and applies to disputes arising out of civil, family, commercial and employment relationships. The Slovak Mediation Act also implemented the EU Mediation Directive into Slovak law.

In recent years, growing emphasis has been placed on preventive out-of-court solutions to conflicts that can be solved by agreement between the parties. Mediation is one of the fastest-growing alternative dispute resolution methods thanks to its informality, relative cost-effectiveness, confidentiality and ability to preserve business relationships that might otherwise have been broken by litigation.

Legal and regulatory framework

The Slovak Mediation Act provides for minor restrictions on the relatively informal process of mediation. It invests the courts with the authority to request the parties to appear before a registered mediator and to try to settle their dispute by mediation. In addition, the parties are encouraged to opt for mediation by the fact that a considerable part (up to 90%) of the court fees can be reimbursed if the dispute is resolved by a settlement approved by the court.

Infrastructure

The Slovak Mediation Act imposes a relatively simple registration mechanism for mediators. The Slovak Ministry of Justice maintains a register of mediators. Mediators need to have a master' s degree but there are no restrictions as to the type of master' s degree. The additional main prerequisites are the absence of a criminal record and a certificate proving completion of a mediation training course.

Judicial support

As a general principle it is the judge' s role to guide the process towards an amicable resolution. However, the parties to litigation may not be forced to negotiate, let alone reach agreement through mediation.

The Slovak Mediation Act contains a principle under which commencement of mediation that meets the criteria of the Slovak Mediation Act results in the suspension of limitation periods with the same legal effect as an action filed with a court.

Effectiveness and enforceability of contractual provision

Mediation depends upon the commitment of the parties to solve their own problems. An agreement under which the parties to a dispute agree to enter into mediation is enforceable and effective in the same way as any other private contract. Mediation is perceived as being based on the free will of each of its participants and can therefore be avoided or abandoned at any stage and any of the parties are free to resort to standard legal proceedings or arbitration.

Under certain circumstances, if the parties submit the mediation agreement to a court for its approval or if the parties execute the agreement as an enforcement agreement in the form of a notarial deed, the agreement can be enforced in the same way as a judgment.

Spain

Mediation culture

Mediation clauses have started appearing more regularly in the last few years, mainly in commercial agreements having a connection with the United States. As there was, until recently, no legal framework for commercial mediation, in practice such clauses simply required formal interchange of notifications between the parties.

Legal and regulatory framework

Mediation in Spain is grounded in the freedom of the parties to resolve their dispute by any means they deem appropriate. In light of this, mediation cannot be imposed on the parties.

The legal regulation of mediation in civil and commercial matters is included in Law 5/2012 on mediation, published after the parliamentary passage of Royal Decree-Law 5/2012, of 5 March 2012, issued following the requirements of Directive 2008/52/EC. We can highlight three facts on the Law: (i) it is the first law governing mediation in Spain; (ii) it does not limit its content to the requirements of Directive 2008/52/EC, as it also includes mediation on civil/mercantile issues; and (iii) it follows the recommendations from UNCITRAL.

Infrastructure

Mediation culture has not traditionally been present in Spanish legal culture. Court proceedings have usually been considered to be the first step when addressing a conflict rather than the last. Both professional mediators and mediation institutions are at an early stage of development. The new law on mediation includes a regulatory framework for mediators and institutions providing mediation services; that framework still requires some further development.

Judicial support

Although unusual in practice, the Court may invite parties to use mediation as a way of resolving their dispute. Nevertheless, such an invitation will not usually involve further involvement by the Court, which will not assist the parties in conducting the mediation.

Should mediation proceedings start by means of an agreement between the parties while pending judicial proceedings, the parties may request the stay of the later proceedings, which will be granted by the Court subject to the limits set in Spanish Civil Procedural Law.

Effectiveness and enforceability of contractual provision

Under Spanish law, where there is a written mediation agreement, the parties must try to mediate and resolve their dispute in good faith before turning to other means of resolution.

However, there is no provision for any consequence if parties do not “try”. In addition, the effectiveness of any contractual provision to mediate depends on the will of the parties, as mediation is configured as a voluntarily process. The parties are not obliged to reach an agreement within mediation proceedings or to stay the Court proceedings. Agreements arising from mediation proceedings are enforceable before the Court of First Instance of the place where the agreement was signed.

Turkey

Mediation culture
Parties tend to litigate disputes in Turkey, so mediation is not common.

Legal and regulatory framework

A Law on Mediation in Civil Disputes (the "**Mediation Law**") was enacted in June 2012 and it will enter into force in June 2013.

Pursuant to the Mediation Law, only private law disputes may be resolved by mediation. The parties are free to decide on the mediation procedure themselves, provided that they act in accordance with the mandatory rules of law.

Infrastructure

Since mediation is not common in Turkey, mediators are not widely available. Pursuant to the newly-enacted Mediation Law, mediators shall be registered and the parties shall choose their mediator from a list of registered mediators. Unless otherwise agreed, the mediator' s fee and expenses shall be shared between the parties. However, the Mediation Law does not make any reference to mediation venues.

It should also be noted that the parties are always free to choose their own mediator who is not on the list of registered mediators and to apply a procedure according to their own preference, if they do not want to be subject to the Mediation Law. However, by choosing a mediator who is not on the registered list of mediators, the parties cannot benefit from the advantages of the Mediation Law.

Judicial support

Pursuant to the Mediation Law and the Civil Procedure Law, the court is not entitled to force the parties to mediate, but it may encourage the parties to do so.

Certain remedies are within the exclusive remit of the courts and the mediator does not have power to order such remedies.

Effectiveness and enforceability of contractual provision

The Mediation Law and the Civil Procedure Law are silent on whether the court may enforce an agreement to mediate.

According to the Mediation Law, if the parties agree to mediate after they start to litigate, the court may stay the litigation pending the mediation discussions.

If a settlement is reached at the end of the mediation process, the parties may request the court to annotate the settlement agreement so that it would be enforceable in the same way as a judgment.

Ukraine

Mediation culture
Mediation remains an uncommon dispute resolution method. It is used occasionally, in certain cases, with the support of various non-governmental organisations ("**NGOs**") and other international institutions operating in Ukraine. In addition, Ukraine has undertaken to work towards the implementation of mediation as part of its EU integration process.

Legal and regulatory framework
Currently mediation is not recognised explicitly under the laws of Ukraine.

There are two draft laws on mediation which are being considered at the moment in the Parliament of Ukraine. However, it is unclear whether these will result in the establishment of mediation as a viable alternative in commercial disputes. In addition, implementation of mediation is envisaged in very broad terms under the Order of the President of Ukraine No. 361/2006 dated 10 May 2006 relating to the improvement of the Ukrainian judicial system and court process. However, there have so far been no developments of substance in relation to the implementation of mediation.

Infrastructure
There are no official mediators and/or mediation centres regulated by law. However, there are a number of private or NGO-based mediation centres, offering mediation services.

Judicial support
Currently, any mediation mechanism takes place outside of the court system and any settlement agreed following mediation would need to be documented simply as an agreed variation of part of the contractual terms between the parties.

There is no ability to force one side to attend mediation or to require any person to agree to or to be bound by it.

Effectiveness and enforceability of contractual provision
Mediation clauses in Ukraine are not enforceable, since such clauses are likely to be considered a violation of the constitutional right to access the courts.

United Arab Emirates (UAE)

Mediation culture

In the UAE, mediation has not been a recognised or popular form of dispute resolution until recently. As a general rule, the Courts have been the preferred form of dispute resolution, but there has been a shift towards arbitration and also mediation in recent years. The UAE has made some impressive recent progress in implementing various forms of mediation. As continued professional training is provided in the UAE, it is likely that the process will gain further momentum and its popularity will increase.

Legal and regulatory framework

In September 2009, the Dubai Government passed the UAE Law No 16 of 2009 which created the Centre for Amicable Settlement of Disputes in Dubai (the "**Centre**"), to which certain disputes (those of low value, those relating to division of common property and those where the parties have agreed to submit to the Centre) must be referred before initiating court action. The Centre is expected to use a process of conciliation in order to bring about settlement. Such disputes may only proceed to the courts once the parties have been unable to reach settlement at the Centre within one month of referral.

The Dubai International Financial Centre ("**DIFC**") Court has its own rules regarding ADR. While emphasising its primary role as a forum for deciding civil and commercial cases, the DIFC Court encourages parties to consider the use of mediation and conciliation (and other such processes) as alternative means of resolving disputes or particular issues within a dispute.

Infrastructure framework

Chambers of Commerce of each of the Emirates have their own conciliation rules. However, there is no mechanism to enforce an order of the conciliation board.

Infrastructure

Mediators/experts are assigned at the Centre under the supervision of a judge. The Royal Institution of Chartered Surveyors ("**RICS**") UAE President' s Panel of Mediators was officially launched at the joint-hosted RICS and Dubai Land Department Conference in Dubai on 1 October 2012. The RICS has been conducting mediation training courses.

In addition, the DIFC-London Court of International Arbitration ("LCIA") Arbitration Centre, established in February 2008, offers mediation as well as arbitration services to users of the Arbitration Centre under the rules contained in the LCIA mediation procedure.

Judicial support

The DIFC Court will not compel parties to engage in mediation as a prerequisite to litigation, although the rules of the DIFC Court give the Court discretion when assessing costs to consider efforts made in trying to resolve the dispute. The Court wil,l however, if appropriate, invite the parties to consider ADR at the Case Management Conference, and may adjourn the case for a specified period of time to encourage and enable the parties to attempt mediation.

Effectiveness and enforceability of contractual provision

Now that the Centre is fully operational, commercial parties who agree to the jurisdiction of the Dubai courts may wish to consider incorporating mediation at the Centre into their dispute resolution clause, regardless of the quantum/value of the dispute. However, the effectiveness and enforceability of contractual provisions in the other Emirates is not clear as there is generally no statutory framework for enforcing an agreement reached through mediation.

If reconciliation is reached at the Centre, it is validated through an agreement signed by the parties and approved by the competent judge, which will make it binding and enforceable.

United States Of America

Mediation culture

In the United States, mediation has become, in recent years, a more common approach to resolving commercial disputes. In addition, mediation is increasingly recognized as a useful tool in settling litigation, both among legal practitioners and sophisticated commercial parties. In recent years, the market has also seen a rise in the number and prominence of commercial mediation organisations and individual mediators. Mediation can be used either before or after litigation has begun, although it is more typical in the United States for mediation to be used as a tool for resolving a pending litigation.

Legal and regulatory framework

In the United States, mediation is typically a matter for the parties to structure for themselves (either by contract before a dispute arises or after the parties have chosen mediation as a method for resolving differences between them). In some cases, a court may order mediation, but even then the process is usually fairly open-ended and it is not uncommon for mediators even in those circumstances to seek agreement from the parties about the process.

Mediations can take any form, and the procedures are usually agreed to up-front at an initial teleconference among the parties and the mediator. The most common format is for the parties to exchange and submit to the mediator a written statement of their case some time in advance of the mediation session (sometimes this is followed by another round of pre-session submissions). Mediations in the United States are generally confidential. In addition, with some narrow exceptions, the rules of evidence in the United States generally preclude the use at trial of any statements made by the parties in connection with the mediation (whether written or oral, and whether or not in the presence of the opposing party).

Infrastructure

Good quality mediators and venues for mediation are widely available.

Judicial support

Many courts encourage mediation early in a litigation (for example, by offering to make court-appointed mediators available to the parties) and, in some cases, the courts will order parties to participate in a non binding mediation (the Lehman bankruptcy is one prominent example).

Effectiveness and enforceability of contractual provision

Commercial contracts in the United States often have provisions requiring the parties to negotiate in good faith before submitting certain disputes to arbitration or seeking a judicial remedy. Although it is less common for such clauses to expressly to require mediation, mediation can be useful – even if a resolution is not reached – for a plaintiff in establishing that it has met any contractual condition precedent to going forward with its claim. Where mediation is a condition precedent to going forward with a claim, but a party has sought to bring suit without having first mediated, a court may find that a claim has not yet ripened under the contract, although such a determination will depend on the particulars of the contractual language and circumstances.

It is also common for the parties to enter into a mediation agreement prior to any mediation, typically including terms governing confidentiality and precluding the use of statements made in the mediation in connection with the litigation (such terms of submission are often provided by the mediator or mediation organisation).

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J201302280042733