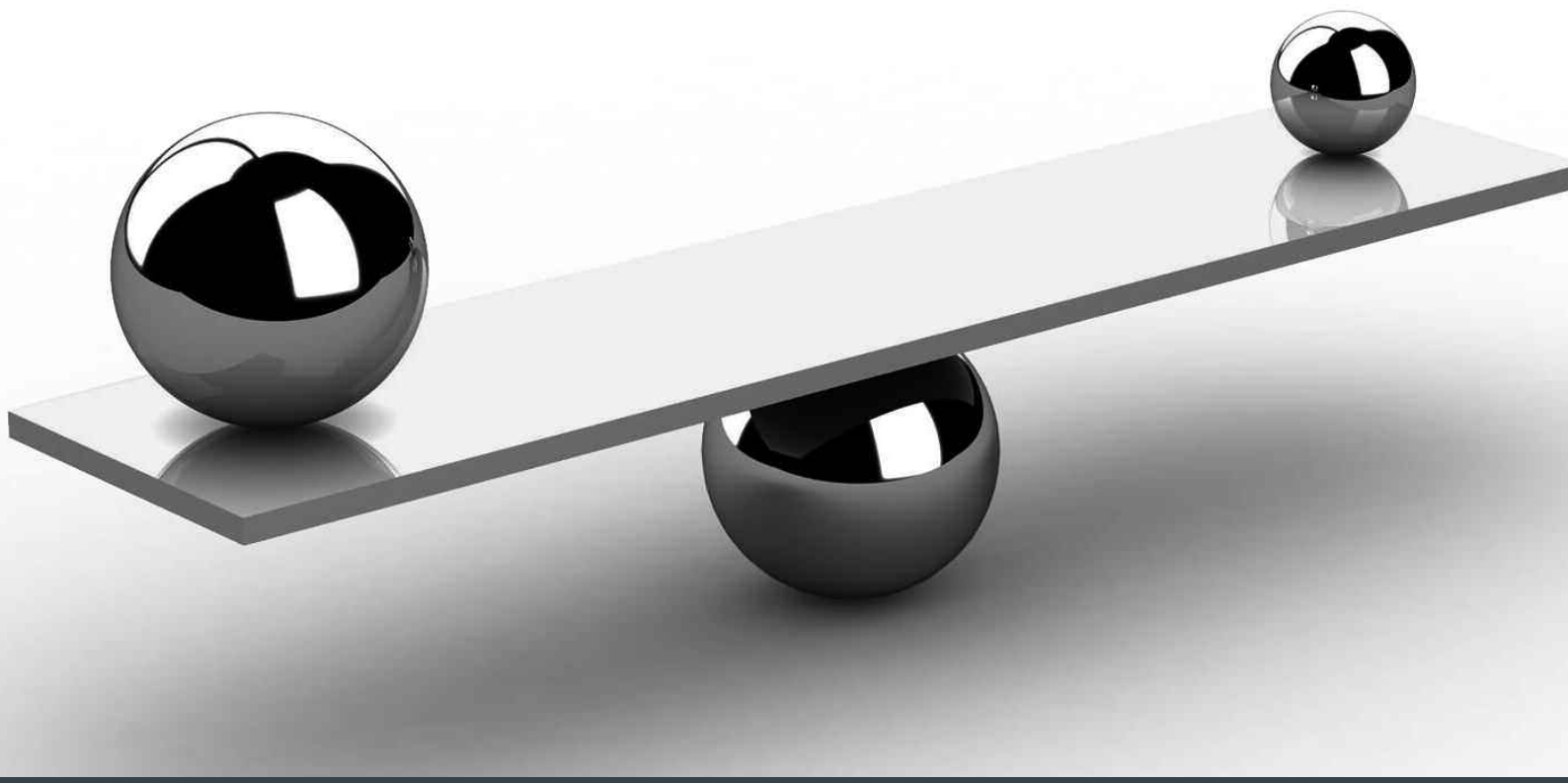

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International Mediation Guide

Second Edition

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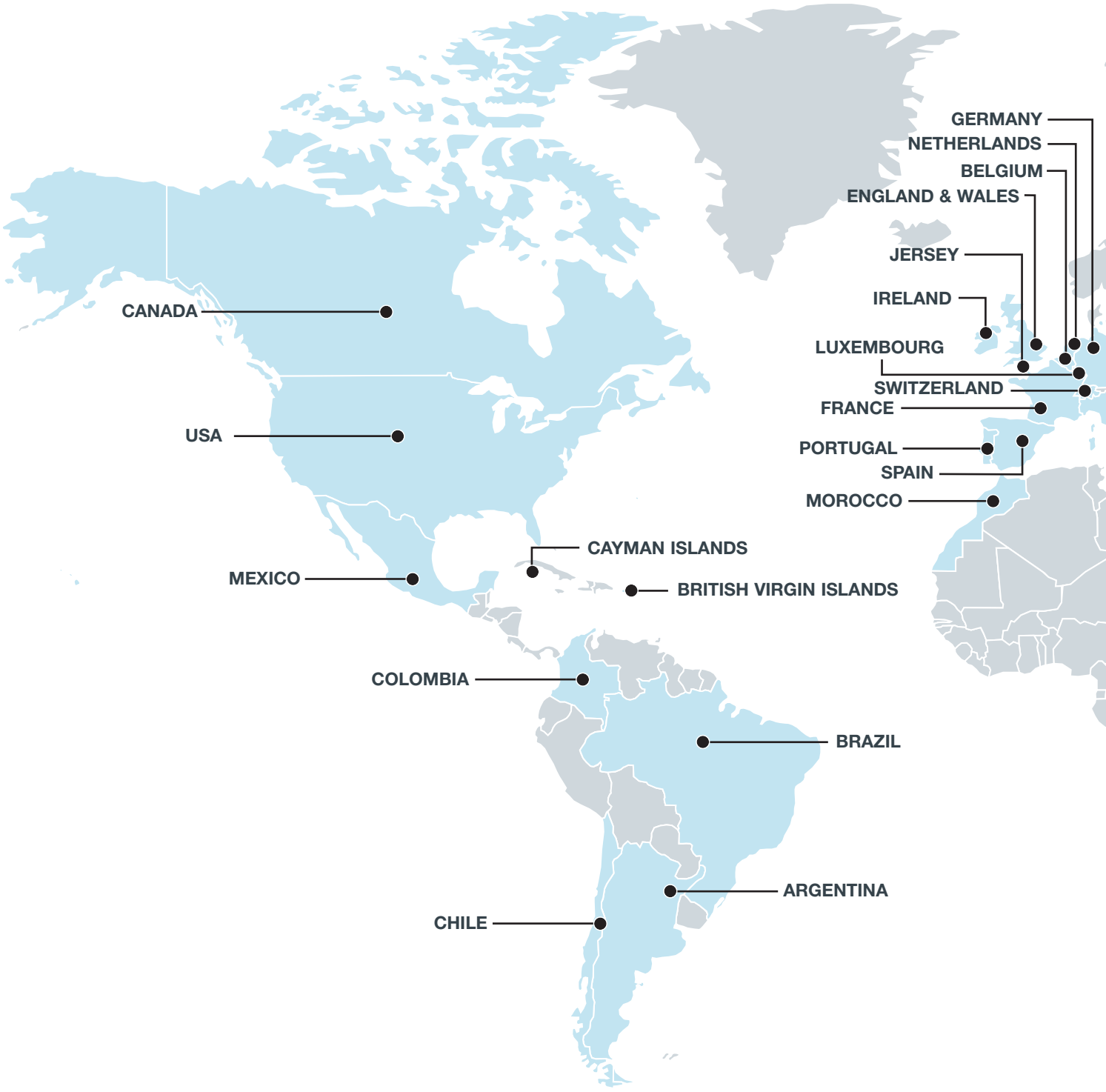
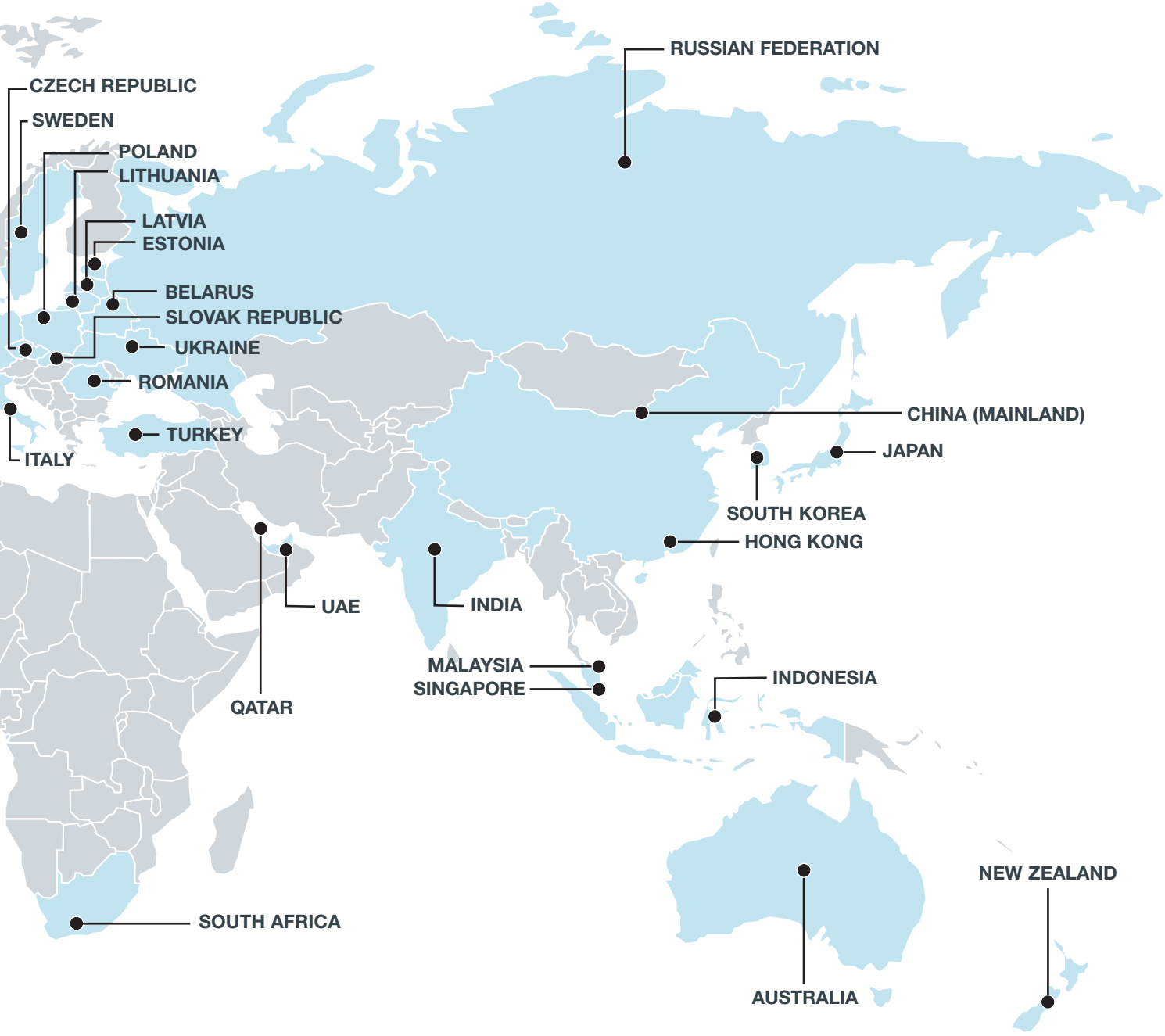




International Mediation Guide: Second Edition

Introduction
Welcome to the second edition of the International Mediation Guide.

The first edition of the Guide, published in 2013, presented an overview of approaches to mediation in 25 jurisdictions. Three years later, we have nearly doubled the size of the Guide to 47 jurisdictions covering six continents, with input from across Clifford Chance's global network as well as from respected local counsel in other jurisdictions.

Mediation remains a hot topic in dispute resolution. Around the world, courts strain under growing backlogs of cases, motivating governments to look for ways of reducing the burden, and inspiring prospective litigants deterred by the prospect of a lengthy court process to pursue alternative options. At the same time, with ever-increasing pressures on businesses' legal budgets, more and more companies are considering how to reduce litigation costs.

Against this backdrop, courts, legislatures, and parties to disputes are more and more receptive to Alternative Dispute Resolution ("**ADR**") mechanisms. A well-timed decision to pursue mediation can be an attractive option for all parties involved. At most, a party risks a day or two of time, with minimal additional costs incurred; in the context of a potentially long and expensive court process, this is a small price to pay. The possible rewards to that party from a successful mediation are myriad: cost and time savings in relation to the in-house employees concerned; curtailing legal bills; and the possibility of a cooperative resolution which preserves the possibility of a future business relationship. The opportunity for a flexible settlement offers many other non-monetary benefits: nuanced, creative agreements may accommodate the particular commercial goals of each party more than a court judgment could. In addition, the opportunity for each side to articulate complaints and potentially explain historic grievances in a moderated yet extrajudicial setting may offer the possibility of each side appreciating the other side's goals and motivations, analysing the shared business relationship, and planning a route forward; alternatively, it gives parties advance warning of how strongly their opponents will fight them.

Moving forward
As this guide illustrates, although mediation and ADR in general is expanding around the world, it is doing so at differing rates. Much has progressed since the first edition of the Guide was published: the "buzz" around mediation is louder than ever, with a blooming proliferation of mediation centres regularly organising seminars, conferences, competitions, training and countless other events to bring together a growing international community of practitioners. The networking, debate, and sharing of experiences and best practices at such events has been invaluable as a way of pushing the mediation agenda forward.

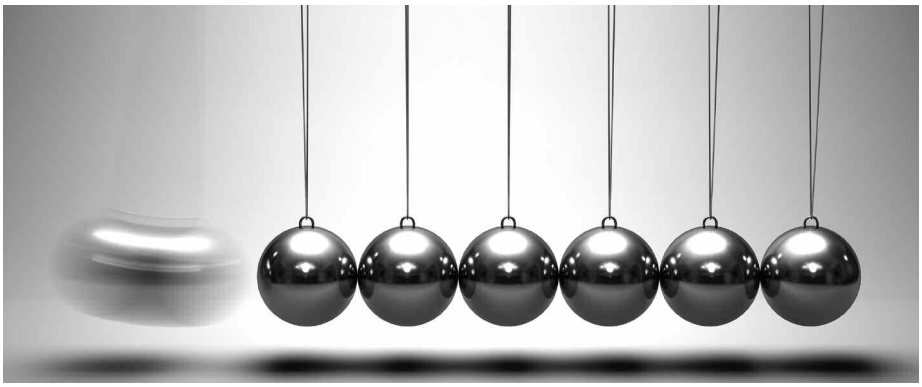
Yet despite widespread official recognition of the potential benefits of mediation (at least in theory), fostering a mediation culture and building trust in practitioners and institutions takes time. In many jurisdictions, litigation culture remains dominant; change may be resisted not only by parties unwilling to submit their disputes to an unfamiliar process, or where business culture may be simply confrontational and aggressive, but indeed by practitioners themselves who may not have bought into the benefits of mediation.

First steps
For jurisdictions in the nascent stages of developing a mediation culture, a common trend is for development to be encouraged through legislation or procedural rules aimed at requiring parties at least to consider mediation as an option, or to make good faith attempts to settle certain disputes before entering into court proceedings. At an early stage, certain types of disputes – for example, in the areas of family law, insurance, or lower-

value commercial disputes – may be considered most suitable for mediation.

Taking root
As a mediation culture becomes more entrenched, jurisdictions see a supporting infrastructure begin to emerge: institutions (either independent or linked to government, court, or business bodies) may offer mediation services or provide lists of recommended practitioners; formal qualifications for mediators as well as ongoing continuing professional development increase; judges and lawyers become increasingly comfortable with mediation as a credible dispute resolution option; and the range of matters and value of disputes considered suitable for mediation expands.

Maturity and beyond
In mature mediation cultures, we see deeper market penetration in all of the areas above. Specific pieces of legislation may be enacted which aim to further embed ADR and mediation practice,



sometimes in relation to targeted types of disputes (see box, "*Spotlight: Key Aspects of Recent EU ADR/ODR Legislation*"). At this stage, although practitioners and the dispute resolution community as a whole may be comfortable with mediation, additional efforts may focus on promoting ADR culture among consumers and businesses; for example, the EU ADR Directive aims to ensure that all consumers, with only limited exceptions, have access to ADR for resolving contractual disputes with traders, and the ODR Regulation promotes ADR processes particularly in relation to disputes about online purchases.

The advantages to consumers of easily-accessible mediation and other ADR mechanisms are well rehearsed: namely satisfactory redress even of low value disputes and simplified enforcement of their rights. However, mature cultures also see the utility of mediation in resolving commercial disputes and, more generally, the importance of effective dispute resolution in promoting commercial activity. Currently, the EU estimates that 60% of traders do not sell online to other countries due to the perceived difficulties of resolving issues arising from such sales. In addition to reducing such obstacles, ADR offers businesses the same cost- and time-saving advantages enjoyed by consumers, as well as an opportunity to minimise reputational consequences from disputes and to preserve customer relations.

Setting the stage

Asking the right questions prior to a mediation process can be as important as anything that takes place at the mediation itself. Some of the key considerations include:

Which mediator? What is required in terms of language ability, mediation expertise, availability, industry-specific familiarity? The choice of an appropriate mediator can make a significant difference to the prospects of success of the mediation.

What kind of mediator? Does the dispute require an evaluative mediator who will examine the merits, or a facilitative mediator who will work more on relationship building between the parties to help them come to a commercial agreement?

Pre-mediation? A preliminary meeting between the mediator and counsel teams can help set the stage, identify areas where further information is needed, and pinpoint key issues for the main mediation meeting. Choices also need to be made as to approach taken in position papers. Depending on the nature of the specific dispute, a party may prefer these to be legal, commercial, or just very brief.

Which team? It is important to decide who to bring along. A decision-maker is required, but should this be a commercial or legal person? What roles should lawyers and clients play? Should there be limits on the decision-maker's power? If so, access to someone who can override the limits is desirable.

Final thoughts

Even the most enthusiastic proponents of mediation readily agree that mediation will not be the right answer in every dispute. Rather, mediation should be thought of as a valuable tool in the disputes practitioner's arsenal, with the potential to be deployed to great effect in appropriate situations.

Spotlight: key aspects of recent EU ADR/ODR Legislation

Directive 2013/11/EU on Alternative Dispute Resolution

Overview

Directive 2013/11/EU on Alternative Dispute Resolution (the "**ADR Directive**") aims to provide European consumers with quick, easily accessible, low-cost avenues to out-of-court redress should a dispute arise in relation to purchases of goods of services. The aim behind this is to increase consumer confidence and in turn to help foster competition and growth.

Scope

The ADR Directive is only concerned with disputes that a consumer has with a business, following a purchase of goods and/or services.

Business-to-business disputes, disputes initiated by a business against a consumer, and disputes regarding health or higher education are not covered.

Entry into force

The ADR Directive was adopted by the European Parliament and the Council on 21 May 2013. The deadline imposed by the EU for implementation by Member States was 9 July 2015.

Key requirements

- Member States must ensure ADR provided by a certified ADR body is available for any dispute concerning contractual obligations between a consumer and a business.
- Although ADR must be available in the situations specified under the ADR Directive, Member States are not obliged to require businesses/consumers to use it.
- Provision of ADR must be free of charge or available at a nominal fee for consumers.
- Disputes must be concluded within 90 days of the ADR body receiving the complete complaint file.
- ADR providers have three weeks from receiving a complaint file to inform parties concerned if they will not be able to deal with a case.

Regulation (EU) 524/2013 on Online Dispute Resolution

Overview

Regulation (EU) 524/2013 on Online Dispute Resolution (the "**ODR Regulation**") provides for a particular ADR procedure, conducted entirely online, designed to help consumers who have purchased goods or services online.

Under the ODR Regulation, the European Commission will establish a European Online Dispute Resolution platform (the "**EODR Platform**") to help consumers and traders refer eligible disputes to certified ADR providers. The EODR Platform allows consumers to submit the details of the dispute via a short, user-friendly complaint form which is accessible on all types of devices, in any of the 23 official languages of the EU. Businesses selling goods or services online are required to carry a link on their website (and in some cases in their contractual terms) to the EODR Platform, and to provide their email address on their website so that consumers have a first point of contact.

The EODR Platform is purely facilitative in that it does not resolve disputes itself, but instead channels them to appropriate national ADR bodies. The system, which applies to both domestic and cross-border disputes, aims to help reduce practical obstacles to obtaining remedy (such as the cost and complexity of bringing court proceedings) and to facilitate resolution of common consumer concerns, such as what can be done when goods are damaged or services are not as described. In addition, the scheme aims to benefit traders: according to the EU, 60% of traders who fall under the Regulation do not currently sell online to other countries due to the perceived difficulties of solving problems arising from such sales.[1]

Scope

The EODR Platform is open to consumers resident in the EU who have bought goods or services online, and traders that are established within the EU and are engaging in online sales or service contracts.

Entry into force

The ODR Regulation was adopted by the European Parliament and the Council on 21 May 2013. The EODR Platform was launched for testing on 9 January 2016, and became accessible to consumers and traders on 15 February 2016.

Process

- Complainant completes an electronic complaint form.
- ODR platform transmits the complaint to the respondent party and invites that party to propose an ADR body.
- Once the ADR body is agreed on by both parties, the ODR platform will automatically transmit the complaint to that body.
- The ADR body that has agreed to deal with the dispute will handle the case entirely online and will reach an outcome within 90 days.

1 http://ec.europa.eu/consumers/solving_consumer_disputes/docs/adr-odr.factsheet_web.pdf

The conversation around mediation continues. Indeed, there is much to discuss: current hot topics include the merits of mediators taking an evaluative versus a facilitative approach and the benefits of a set format as against an evolutive and adaptive format. Meanwhile, the United Nations Commission on International Trade Law ("**UNCITRAL**") is considering developing an international convention or other standardised instrument which would provide for cross-border recognition and enforcement of mediation agreements. The proposals are currently being discussed by a working group, and, while the plans have the potential to make mediation even more widespread, concerns exist about the scope of such proposals and whether standardisation would diminish the advantages of flexibility currently enjoyed by users of mediation. Even among experienced practitioners, varying experiences and approaches in these areas provide plenty of room for debate.

As this Guide illustrates, litigation cultures around the world differ vastly; however, the driving factors inspiring greater recourse to mediation are universal. It is therefore likely that, although contrasting cultural attitudes, established legal practices and prevailing legislative and procedural frameworks mean that the "embedding process" will progress at different rates, over time mediation will become an increasingly well-established form of dispute resolution around the world. It is clear in which direction the tide is moving.

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Argentina

Mediation culture	Mediation is very common in Argentina following the introduction in 1996 of mandatory pre-trial mediation. In the city of Buenos Aires, mediation hearings are required prior to initiating any court action concerning commercial and civil property matters and labor claims. Several provinces have a similar requirement. More recently, a special pre-trial mandatory mediation requirement has been established for consumer-related claims subject to the jurisdiction of special consumer courts. While the consumer courts have not been yet established, the pre-trial mandatory mediation requirement is fully operational. Pre-trial mediation is mandatory in almost all matters that may be resolved through settlement. Matters excluded from mandatory mediation (such as criminal, personal freedom and bankruptcy matters) generally may not be subject to voluntary mediation or settled; accordingly, there has not been much room for development of alternative mediation structures in those fields. As pre-trial mediation is confidential, there are no official statistics as to the number of cases resolved through mediation. However, unofficial statistics would appear to indicate that litigation has decreased following the implementation of the pre-trial mediation requirement.
Legal and regulatory framework	Pre-trial mediation proceedings are governed by local law. In the city of Buenos Aires, mandatory pre-trial mediation on civil and commercial matters is contemplated in the Civil and Commercial Procedural Code and regulated by Law 26,589. Law 26,993 governs consumer-related claims pre-trial mediation. Pre-trial mediation concerning labor matters is governed by Law 24,635, which organized the "Mandatory Labor Conciliation Service" ("**SECLO**," by its acronym in Spanish) within the Ministry of Labor and Social Security.
Infrastructure	Mediators need to be duly qualified and registered. As mediation has been mandatory for almost 20 years, there are very experienced mediators registered in the Mediators' Register kept by the Ministry of Justice. The qualifications for being admitted as a registered mediator are governed by local law. In the city of Buenos Aires, mediators are required to: (i) be a lawyer with at least three years of experience; (ii) complete mediation training in an institution duly authorized by the Ministry of Justice; (iii) successfully complete a qualification exam; and (iv) have access to suitable facilities to undertake mediation activities. Following registration, mediators are required to complete ongoing training programs organized by the Ministry of Justice. Mediators handling consumer-related matters must be registered in a special registry. This special registration requires mediators to complete a consumers' protection training program and approve a final examination. In Argentina, it is usual to have mediators carrying out their activities through their own private practices; however, there are also a few mediation centers, such as the Dispute Prevention and Resolution Center of the Ministry of Justice and the Mediation Center of the Buenos Aires Bar.
Judicial support	In addition to mandatory pre-trial mediation, judges are entitled to encourage the parties to reach settlement. They may also order parties to pursue mediation if the nature and the status of dispute so allows. An agreement reached by the parties during mediation is generally enforceable against them if executed with the appropriate formalities. Except where minors or mentally disabled individuals are involved, court approval of settlement agreements is not required, and the agreement is as enforceable as a court decision would be. Settlement agreements reached within labor and specific consumer-related pre-trial mandatory mediation processes require approval by the Ministry of Labor or by the Secretary of Commerce, respectively to become enforceable. Enforcement is generally granted if the agreement is fair and establishes a term for compliance. If mediation fails and the matter is eventually decided in court, legal costs awarded by the court must include all expenses made for the purposes of avoiding litigation, including mandatory pre-trial mediation costs.
Effectiveness and enforceability of contractual provisions	Contractual provisions requiring that matters under dispute be submitted to mediation prior to the initiation of court or arbitration proceedings are fully enforceable. Accordingly, neither party will be entitled to initiate arbitration proceedings until the contractually-agreed mediation requirement has been satisfied. In matters subject to mandatory pre-trial mediation, judges may not intervene until the parties provide evidence that they have fulfilled the mediation stage.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is likely to develop in Argentina mainly through the continued application of mandatory mediation and the progressive implementation of the recently enacted system regarding special mediation of consumer-related claims. Mandatory pre-trial mediation was intended as a temporary system that would encourage citizens and lawyers to resolve disputes without resorting to litigation; however, mediation has now been accepted as a permanent mechanism. Accordingly, we see mandatory pre-trial mediation as a de facto permanent feature that will continue to lead to amicable resolution of matters that would otherwise be subject to litigation.

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Australia

Mediation culture	Mediation is an important and well-utilised form of ADR 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 in a confidential setting.
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 is likely to be a highly relevant factor in any such statement. A court exercising its discretion to award costs in civil proceedings may have regard to the contents of a genuine steps statement and whether a person in fact took genuine steps to resolve the dispute. Similar requirements apply to proceedings in certain state courts. There remain, however, states where such legislation is not currently in force (e.g. proceedings in the Supreme Court of New South Wales).
Infrastructure	Because mediation culture is well-established, experienced mediators are widely available, including full-time professional mediators (often retired judges for mediation of complex commercial disputes). Australian National Mediator Standards were introduced in January 2008 for approval of mediators under a national accreditation scheme. Suitable venues for mediations are also widely available.
Judicial support	The courts have endorsed mediation as an integral part of the adversarial system. It is very common for mediations to be ordered in commercial disputes, often when the proceedings have reached a stage where the evidence of the parties is complete and all discovery has been provided. Provision is also often made in court ordered procedural timetables to allow mediation to take place. An unreasonable failure to mediate may have adverse costs consequences including indemnity costs orders.
Effectiveness and enforceability of contractual provisions	Dispute resolution clauses are not specifically enforceable in equity due to the unacceptable level of court supervision this would require. However, the courts may achieve practical enforcement by staying or adjourning proceedings until the requirements of a dispute resolution clause are fulfilled. In general terms, dispute resolution/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.
How is mediation likely to develop in this jurisdiction in the medium term?	There is an increasing willingness from the courts to require parties to litigation to mediate and an expectation that it will occur as a matter of best practice.

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Belarus

Mediation culture	Mediation remains a novel form of dispute resolution in Belarus, but a fast-evolving one. A particular mediation development in Belarus is the shift from a judicial (i.e. court-annexed) conciliation that is widely used for resolving commercial disputes considered by state courts, to non-judicial (private) mediation, which is emerging after the recent adoption of legislation creating the necessary regulatory framework. The development of mediation in Belarus has been fostered to a large extent by the state courts which seek alternative ways to deal with increasing caseloads, as well as a group of mediation enthusiasts active in promoting mediation and its values, despite the lack to date of any considerable financial return.
Legal and regulatory framework	The Law "On Mediation" (the "**Mediation Law**") came into force on 24 January 2014 and was followed by regulations on mediators' ethics, the mediation process and other matters. According to the Mediation Law, mediation can be used to resolve disputes in the fields of civil, commercial, labour and family law. Mediators and parties to mediation are required to keep confidential all information obtained in the course of mediation, unless otherwise provided by a written consent of the parties. Parties may refer their dispute to mediation either before or after a case has been filed with state or arbitration court. Judicial mediation (conciliation) is considered a part of court proceedings and is regulated by the civil and commercial procedural codes.
Infrastructure	Currently, there are about 200 certified mediators in Belarus. To obtain a mediator certificate an applicant shall either have higher education and successfully pass a specialized mediation training program, or have experience as a conciliator. There are several mediation centres active in promoting mediation, organising mediation courses and providing mediation services. Two leading institutions are the Centre "Mediation and Law" and the Centre for Mediation and Negotiations. Leading Belarusian universities have introduced courses on ADR into their curriculums.
Judicial support	Both in-court conciliation and private mediation receive support from state courts. Judges may refer parties to mediation both in judicial and non-judicial forms and regularly do so. There were a number of social mediation projects jointly organised by courts and mediation centres where disputing parties were offered mediation services free of charge. Mediation agreements are enforceable by the courts if they meet all the formal requirements established by legislation in relation to in-court settlement agreements, including such requirements as being in writing, the conditions/amount/timing of the implementation of commitments, as well as specifying the consequences of a failure to voluntarily implement the agreement.
Effectiveness and enforceability of contractual provisions	The parties may either include a clause on the use of mediation in the underlying contract or conclude a separate agreement on mediation when the dispute arises. In the latter case, applicable limitation periods are suspended until the end of mediation. However in both cases, the existence of a mediation clause or agreement to mediate shall not prevent the parties from submitting a dispute directly to the court without resorting to mediation.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is gradually gaining more acceptance, overcoming initial public caution and lack of awareness. For the foreseeable future, state courts are likely to keep playing a major role in popularising mediation by encouraging parties' referral to mediation and by providing the required judicial support. However, without continued creation of regulatory and/or financial incentives for the parties to refer their disputes to mediation it will be very difficult for private mediators to develop their practice on a commercial basis and to compete with quick and inexpensive resolution of disputes by state and arbitration courts.

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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	The Belgian judicial code contains a chapter on mediation which entered into force on 21 February 2005. 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 a Belgian "mediation culture" is a relatively recent development, the number of experienced mediators remains limited so far. The Federal Mediation Commission, created 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 provisions	Where a contract contains a provision to mediate, the Court 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 judgement.
How is mediation likely to develop in this jurisdiction in the medium term?	As part of an ambitious plan for the reform of the judicial system, the Ministry of Justice announced in 2015 that ADR systems, beginning with mediation, should be encouraged and that various measures and steps will be taken to that effect. It was also announced that the Federal Mediation Commission would see its role and responsibilities increasing in the future. As a consequence, it can be expected that mediation will gain in importance in the medium term, although the Minister's intentions have not yet been translated into concrete measures.

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** Clifford Chance was the first foreign law firm to register with the Brazilian Bar Association in Sao Paolo. However, like all international law firms in Brazil, we are limited in the provision of Brazilian law advice. We work closely with Brazilian firms, including Felsberg Advogados, to provide the expertise our clients need in Brazil.*

Brazil

Mediation culture	Mediation is becoming increasingly important in Brazil. In 2010, the Brazilian National Council of Justice issued Resolution No. 125 (the "**Resolution**") to encourage mediation practice in Brazil, with some success. The Resolution included instructions on handling disputes, as well as significant data on the practice of mediation in Brazil. Since publication of the Resolution, the mediation market in Brazil has become significantly more active and there has been a noticeable uptake in mediation in small claims, family and criminal disputes in particular. Still, mediation is not yet part of mainstream commercial culture and the mediation rate is still relatively low in large-scale disputes. Until now, most commercial mediation has been extrajudicial.
Legal and regulatory framework	Law No. 13,140 (known more popularly as the "**Brazilian Mediation Law**") was enacted in June 2015 and establishes mediation rules for parties, lawyers and mediators based on international standards. The new Brazilian Civil Procedure Code, which will come into effect in March 2016, supplements the Brazilian Mediation Law in providing for mediation or conciliation in the early stages of most disputes. A notable aspect of the new law is that parties to an agreement may now include a binding mediation clause to provide for a mandatory mediation meeting if a dispute arises. With respect to public entities, the new law provides for the inauguration of administrative resolution and conflict chambers in the future.
Infrastructure	The availability of mediators in Brazil is improving along with the development of binding mediation rules: there are now many mediation institutions in Brazil whose activities have intensified alongside the development of new rules. A "Brazil Initiative" by the major mediation bodies is developing a network of mediators, including arbitral chambers and bar associations. The fourth Business Mediation Congress will take place in May 2016 and a national conference on mediation training took place in 2015.
Judicial support	The new Civil Procedure Code requires judges to schedule a mediation or conciliation hearing at the outset of a dispute, which the parties must attend unless both declare a lack of interest in mediation. Any party who is unjustifiably absent from a mediation hearing can incur a judicially-sanctioned penalty of up to 2% of the value of the dispute. Once the initial hearing has taken place, the Brazil Mediation Law expressly provides that parties will not be obliged to continue mediation.
Effectiveness and enforceability of contractual provisions	Mediation clauses are not unusual in private contracts in Brazil. The Brazil Mediation Law requires that mediation clauses contain at least a date and location for the first mediation hearing. Given the novelty of binding mediation rules in Brazil, there are currently no directly relevant precedents concerning the enforceability of contractual mediation provisions in the Brazilian courts.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is likely to continue to gain relevance in Brazil, in particular in the commercial and public fields. As the rules become better understood and supported by the judiciary, and the mediation procedures normalised, parties to commercial disputes will become less reticent to engage substantively in the mediation process. In addition, it is anticipated that the scope of mediation will diversify, with the new laws permitting mediation in labour disputes and intellectual property matters.

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British Virgin Islands

Mediation culture	Mediation is gaining in popularity in the BVI. That said, whilst mediation is particularly suitable to family and trusts disputes, it is infrequently used in large multi-jurisdictional disputes which represent the greater part of the work of the Commercial Court. In general, by the time proceedings are issued in the BVI, other dispute resolution avenues will already have been exhausted, or it will be clear that there is no prospect of their succeeding. Mediators do, however, often appear on tribunal panels, for example those hearing employment disputes. Mediation is also becoming more popular in cross-border insolvency disputes, where it can be a very cost-effective tool.
Legal and regulatory framework	Parties to disputes are generally free to settle those disputes however they choose. The Civil Procedure Rules provide that the Court must further the overriding objective by actively managing cases, including encouraging mediation and facilitating it. A Practice Direction provides that a judge or master may make an order referring a civil matter to court-connected mediation. However, the Practice Direction is somewhat outdated (having been published in 2003); although in theory it remains in force in BVI, there is some doubt about whether the Court can be given a power by Practice Direction which it was not given in the Rules themselves. Recently, however, plans have been introduced by the Eastern Caribbean Supreme Court to revive and promote the process envisaged by the Practice Direction.
Infrastructure	There is a court-approved roster of mediators of varying ages, experience, and backgrounds. Admission to the roster is dependent on having a mediation accreditation, although there is no BVI specific standard. Suitable venues are available.
Judicial support	Under the Practice Direction referred to above, where a party fails to attend a mediation, the Court may make an adverse costs order and/or exercise any of its case management powers. If no agreement is reached at the conclusion of the mediation, the proceedings will be returned to case management for trial.
Effectiveness and enforceability of contractual provisions	If arrangements between the parties provide that an ADR process must be undertaken before legal proceedings can be issued, the Court has a discretion whether to stay the proceedings until that process has been completed, and will generally exercise that discretion absent other factors (such as urgency, the need for interim relief or grounds for summary judgment). As with all contractual provisions of this nature, the process must be sufficiently defined and certain. There should be, at least, an unequivocal agreement to engage in mediation and a clear process (even if simple by reference to a model put in place by an ADR organisation).
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is going to become more popular, particularly as and when the process set out in the Practice Direction is revived and the quality and experience of mediators continues to improve. It is less likely to increase in popularity in relation to the large civil matters, not least because the majority, if not all, of the parties in such matters are often based outside the BVI, and any mediation process is likely either to have taken place already, or to be highly unlikely to succeed through a BVI mediation.

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Canada

Mediation culture	In Canada, mediation is a common approach to settling disputes and, thereby, avoiding the cost and delay often associated with litigation. Mediation is strongly encouraged by the legal profession and the judiciary and, in some cases, required by statute. The use of mediation is not a recent development, but its prominence, particularly in commercial matters, has expanded over recent years. In some regions, all or nearly all cases will proceed to mediation at some stage of the litigation.
Legal and regulatory framework	In Canada, there is no single, statutory framework governing mediation. Rather, it is subject to both federal and provincial/territorial law. Several federal statutes expressly address the availability of mediation in particular circumstances. More broadly, the provinces and territories may also address mediation in areas within their jurisdiction, such as civil procedure. For example, parties to litigation in some regions (such as parts of the Province of Ontario) are required to mediate their disputes. Generally, parties may elect to mediate at any stage, either before or after formal proceedings are commenced. The form and terms of mediation are determined by the parties or by the chosen mediator. It is common for the parties to exchange written briefs setting out and explaining their positions on the key issues in advance of the mediation. In addition to these briefs, statements at mediation may not be used or disclosed in the actual litigation (subject to specific exceptions). Some mediators also require the parties to sign a written acknowledgement of confidentiality in advance of mediation.
Infrastructure	There are a significant number of private mediators in Canada, and those individuals typically provide or have access to the necessary facilities. It is also possible for members of the judiciary to act as mediators between parties engaged in active litigation. In some jurisdictions, judges preside over pre-trial conferences, not only addressing the parties' readiness for trial but also providing an opportunity to pursue settlement with the aid of the pre-trial judge. Judicial mediation can also occur on an ad hoc basis in some jurisdictions, such as the Province of Ontario, or on application by the parties, such as in Alberta. In the Province of Québec, which (unlike other provinces) has a Civil Code, there is a formal legislative scheme providing, and setting out the conditions, for judicial mediation.
Judicial support	Mediation is strongly encouraged by the judiciary. Judges have ordered parties to attend or re-attend mediation and, as noted above, acted as mediators in some cases.
Effectiveness and enforceability of contractual provisions	Canadian courts will generally enforce the terms of commercial agreements, including mediation clauses if the language of the parties' obligations is clear and precise. However, in the event that a particular clause is inconsistent with a statutory provision, the court might find that clause to be void or unenforceable to the extent of such inconsistency.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation continues to increase in importance across Canada as parties recognise its advantages and it becomes more common for provincial legislatures to mandate some form of ADR as part of the litigation process.

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Cayman Islands

Mediation culture	The use of ADR in the Cayman Islands is slowly gaining momentum. Whilst the most common alternative to litigation is arbitration, mediation is becoming more common in trust and insurance disputes and is frequently used in the Cayman Islands in respect of employment, family and landlord and tenant matters. In the case of large (often multi-jurisdictional) commercial disputes, mediation has been used only infrequently to date.
Legal and regulatory framework	There is currently no provision in the Cayman Islands court rules for court mandated ADR, with adverse costs implication for failure to comply. However, the Cayman Islands Grand Court Rules do require parties to deal with each case in a just, expeditious and economical manner and for judges to encourage the parties to pursue ADR where appropriate. The procedures adopted in the mediation process are generally agreed by the parties or determined by the mediator. In May/June 2016 it is expected that new mediation rules applicable to family cases, including divorce matters and all matters involving the welfare of a child, will come into force which will require such matters to be automatically referred for mediation by an accredited mediator (which may be a judge, magistrate or outside mediator).
Infrastructure	In 2011 The Cayman Islands Association of Mediators and Arbitrators ("**CIAMA**") was established to promote ADR in the Cayman Islands and to facilitate accreditation of individual mediators. CIAMA also provides a list of professional accredited mediators. It is also possible for members of the judiciary who have received mediation training to act as mediators between parties engaged in active litigation. It is increasingly common for commercial agreements to contain a mediation (or arbitration) clause selecting the Cayman Islands as the venue for the dispute resolution process, and suitable venues are available.
Judicial support	The Cayman Islands courts embrace, but do not require, the resolution of disputes by alternative methods of dispute resolution. As referred to above, the Grand Court Rules sets out an overriding objective of conducting cases in a just, expeditious and economical way and the parties' pre-action conduct may be taken into consideration when the court considers whether the overriding objective has been met. If the parties want to engage in mediation, as part of its general case management powers the court can give directions which allow time for the mediation to take place.
Effectiveness and enforceability of contractual provisions	The Cayman Islands courts will respect the freedom of parties to agree an ADR procedure. Accordingly, where parties have made an unequivocal agreement to undertake mediation as a means of settling a dispute, we would expect the court to stay any legal proceedings in order for the mediation to take place. Whilst there are no statutory rules in the Cayman Islands governing what information the mediation agreement/clause is required to contain, it must as a matter of the basic principles of contract law be sufficiently clear and detailed to allow meaningful enforcement.
How is mediation likely to develop in this jurisdiction in the medium term?	It is likely that mediation as a form of ADR will continue to grow and develop in the Cayman Islands, particularly in respect of matters before the family division and in the context of trust disputes where the benefits of mediation are readily identifiable.

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Chile

Mediation culture	Despite being unanimously acknowledged as a valid alternative for dispute resolution, mediation has not yet become embedded within Chilean commercial and civil litigation culture, and thus remains as an exceptional mechanism. Some of the reasons that explain this phenomenon are that parties to litigation still perceive mediation as a time-consuming and costly process, that litigators are reluctant to exhibit their arguments outside courts (or arbitral tribunals), and that mediators lack decisive power. Rather than mediation, parties to litigation prefer to recourse to other ADR mechanisms, such as arbitration, conciliation and extrajudicial negotiations. Chilean legislation only provides for mandatory mediation in family cases and other specific situations (for example, tort claims brought by patients against health providers).
Legal and regulatory framework	Chilean legislation does not provide for compulsory mediation in civil and commercial procedures. Additionally, courts are not granted the power to order forced mediation in those cases which are not specifically determined by law. Nevertheless, parties to an agreement can validly insert mediation clauses in commercial and civil contracts, which will be enforceable by courts.
Infrastructure	There are some institutional bodies which offer mediation services with qualified mediators. Among these are the Arbitration and Mediation Center of the Santiago Chamber of Commerce – which provides a list of professional mediators – and other specialized institutions. These bodies usually have their own rules of mediation procedure which seek to promote efficiency, flexibility and confidentiality. Parties also have the right to determine their own rules of procedure.
Judicial support	Chilean legislation does not oblige or encourage courts to conduct or recommend mediation at any stage of a civil or commercial proceeding. Consequently, mediation has remained relatively little used. However, this trend is slowly changing with the incorporation of compulsory mediation in some procedures (for example, family law), and with the continuous promotion of mediation as an ADR mechanism by state agencies and private institutions.
Effectiveness and enforceability of contractual provisions	Chilean legislation provides that parties to a commercial or civil agreement can freely determine future dispute resolution mechanisms and thus avoid court litigation. Therefore, mediation clauses are legally binding and enforceable in Chile, provided that they meet basic requirements such as specifying the person/institution in charge of conducting the mediation (or the mechanism to be followed to designate him/it), specifying the matter(s) subject to mediation, and dealing with a matter which is not exclusively within the competence of the courts (such as criminal issues).
How is mediation likely to develop in this jurisdiction in the medium term?	Chilean law has progressively incorporated opportunities for compulsory mediation as a way to promote amicable solutions between parties and avoid court litigation. Additionally, cases of voluntary mediation have been recently incorporated by law (for example, collective bargaining in labor cases) and in governmental programs, some of which have been reflected in bills for future laws. However, mediation is still largely unused in civil and commercial litigation, especially when compared to other ADR mechanisms. For example, according to the Arbitration and Mediation Center of the Santiago Chamber of Commerce, in 2015 about 20 mediations were initiated, compared with 300 arbitrations brought in the same year. A substantial proportion of the mediations related to construction disputes (27%). Since the introduction of the mediation service in 1997, only 11% of the mediations undertaken have ended in agreement.

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China (Mainland)

Mediation culture	Resolving conflicts via a system of ritual and manners, rather than legal argument, is a philosophy rooted in Chinese culture. This 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 have been gaining popularity in resolving civil and commercial disputes. Mediation is also regarded as an efficient way to ease the heavy caseload of the court. According to the Supreme People's Court of China, 4,619,000 cases were resolved through mediation or by voluntary withdrawal in 2014. In specific industries such as securities and insurance, mediation has increasingly been perceived as a cost-effective dispute resolution mechanism. Conciliation, as an alternative to mediation, also exists in China.
Legal and regulatory framework	Whether to commence mediation and which form of mediation to be employed requires the parties' consent. There is no single piece of legislation governing mediation in China. There are various laws and regulations containing provisions relating to different types of mediation, including commercial mediation, civil mediation (usually conducted by villagers' and residents' committees and primarily used in civil disputes and property disputes), mediation in connection with arbitration and judicial mediation. In particular, the Law of the People's Republic of China on Civil Mediation entered into force on 1 January 2011, and the Civil Procedure Law of the People's Republic of China amended in 2012 ("**Civil Procedure Law**") contains a specific chapter on judicial mediation.
Infrastructure	As mediation is gaining popularity in China, experienced mediators have become increasingly available. There are no nation-wide practice standards for mediators, although most mediation centres have their own rules regulating mediators. Suitable venues are widely accessible. For instance, there are several bodies that provide commercial mediation services, including international trade centres and specific industry led forums.
Judicial support	Chinese legislation and court practice encourage judicial mediation. The Civil Procedure Law provides that in any dispute where the court considers mediation to be appropriate, the court may first conduct mediation, unless the parties to the dispute object. The court may conduct mediation at different stages, such as before or after acceptance of the case, before, during or after the hearing, or during appeal, provided that the parties voluntarily participate in the process. If such a court-administered mediation results in a settlement agreement, the court shall (in most types of cases) prepare a formal mediation statement, which becomes legally binding upon the parties once they sign for it upon service. The Civil Procedure Law generally provides that the court shall promptly render a judgment if no agreement can be reached through mediation. However, it does not prescribe specific procedure rules for conducting mediation, or cost consequences in cases such as purposeful delay or unreasonable failure to mediate.
Effectiveness and enforceability of contractual provisions	There is no specific statutory basis as regards enforceability of an agreement to mediate in China. If a party refuses to comply with an agreement to mediate, the other party may at most seek damages, but generally is unable to seek specific performance. In practice, if mediation is agreed as a precondition to arbitration or litigation, it is advisable to specify when the mediation should start and end, otherwise it may give rise to undue delay in commencing arbitration or litigation.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is relatively underdeveloped in China in comparison with arbitration and litigation. Nevertheless, in specific industries such as internet, intellectual property, securities and insurance, where resolving disputes requires expertise in the relevant fields, resorting to mediation conducted by industry-specific mediation centres has become a growing trend. The Supreme People's Court of China designated the development of mediation both within and outside the context of litigation as one of its key agendas in 2015. Meanwhile, there have been proposals for the enactment of an integrated Mediation Law. Whether such proposals will be considered by the Chinese legislature and what changes they may bring to the current mediation activities in China still remain to be seen.

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Colombia

Mediation culture	Mediation is a form of dispute resolution that has not been developed by Colombian regulation. Instead of mediation, conciliation is the most relevant alternative method of dispute resolution regulated and accepted in Colombia. Through conciliation parties can resolve disputes in commercial, civil, labor, administrative and family matters.
Legal and regulatory framework	Conciliation is regulated mainly by Law 446 of 1998 and Law 640 of 2001. There are other specific applicable regulations depending on the matter object of conciliation. Article 64 of Law 446, 1998 defines conciliation as a proceeding by which the parties reach a solution with the help of neutral third person, the conciliator, who might propose ways to solve the conflict. Law 640 of 2001 establishes two types of conciliation in Colombia: out of trial and within trial. Out of trial conciliation occurs outside the judicial process and before filing the lawsuit at the court. This kind of conciliation can be in equity or according to legal provisions. Within trial conciliation occurs within a trial or arbitral proceeding where the judge or panel encourages and suggests the parties to solve the dispute through mutual agreement. In some matters, out of trial conciliation is a compulsory requirement that must be fulfilled in advance of filing a lawsuit before civil, administrative and family jurisdictions. Most commercial matters must comply with this requirement before bringing a case to a trial. The filing of the request of extrajudicial conciliation in law suspends the statute limitation period of the actions for three months.
Infrastructure	Law 640 of 2001 establishes the requirements that must be met to provide conciliation services. Conciliators who act according to legal provisions must be lawyers (except when the conciliation service is provided by a notary, municipal representatives, or universities), trained in ADR mechanisms and registered in an official conciliation center. The institutions which provide the conciliation service may be public or private. The service is free when the conciliation is handled by law faculties of private and public universities, public entities, or the municipality. If parties choose a private institution, they will have to assume the payment of a fee.
Judicial support	Courts conduct conciliations within ordinary judicial proceedings. It is a stage of the judicial proceeding. After admitting the lawsuit, the judge calls the parties to a conciliation hearing. During the hearing the judge can propose solutions but he cannot impose a conciliation agreement. If parties do not reach any agreement during the hearing, the judicial proceeding will continue with the evidence stage.
Effectiveness and enforceability of contractual provisions	According to Colombian regulation, an agreement reached out of trial or within trial conciliation has the status of res judicata and is enforceable as a ruling. This means that in case a party does not comply the agreement, the other party may start an enforcement proceeding before the Court in order to get the fulfilment of the settlement.
How is mediation likely to develop in this jurisdiction in the medium term?	Even though mediation is recognised as one of the ADR mechanisms, it has not been developed by Colombian regulation as Conciliation has been. Therefore, currently conciliation is the most accepted method to solve controversies outside the court in Colombia.

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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. Recent government proposals also strive to promote ADR in consumer disputes.
Legal and regulatory framework	The Czech Mediation Act (effective from 2012) and the Civil Procedure Act provide the foundations of the legal framework for mediation in the Czech Republic and implement the EU Mediation Directive 2008/52/EC. The Czech Mediation Act introduces only minimal restrictions as to the type of disputes to be referred to mediation or the identity of the mediator. The commencement of a mediation meeting the criteria of the Czech Mediation Act also results in the suspension of limitation periods in relation to that dispute. In March 2015, the Czech government proposed an amendment to the Consumer Protection Act introducing optional conciliation proceedings for consumer disputes. The amendment also introduces new information obligations for businesses towards consumers regarding the option of conciliation.
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 a 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 stay proceedings and to order the parties to appear before a mediator. In addition, the parties are encouraged to pursue 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 cannot be forced to negotiate, or to reach agreement under the mediation procedure.
Effectiveness and enforceability of contractual provisions	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.
How is mediation likely to develop in this jurisdiction in the medium term?	The number of mediation proceedings initiated in the Czech Republic has steadily grown during the last few years, especially in the commercial sector. We expect this trend to continue in the business-to-business sector and the March 2015 government initiative may lead to wider use of ADR mechanisms in consumer-to-business disputes as well.

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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 provisions	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.
How is mediation likely to develop in this jurisdiction in the medium term?	Although mediation is already well established in England and Wales, parties are likely to show increasing willingness to engage in mediation as they become convinced of its benefits, and as more "success stories" are observed. It is also likely that a growing trend of judges showing willingness to propose mediation in commercial disputes will continue. The Civil Mediation Council, an organisation whose aim is to promote civil (non-family) mediation in England and Wales, introduced an individual registration scheme in 2015 for practising mediators. Through this and similar initiatives, we can anticipate that the organisation and formal accreditation of mediators will continue to develop in the medium term.

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Estonia

Mediation culture	Mediation is uncommon in Estonia. It is mainly used in insurance disputes and disputes concerning family law. Parties to commercial litigation are generally either not advised that mediation can be a useful process for resolving disputes, or they are reluctant to opt for it due to a bias against mediation. Most commercial disputes that are referred to mediation are a result of the efforts by the parties' representatives. Mediation in general is a little-known and little-used mechanism for dispute resolution.
Legal and regulatory framework	The European Mediation Directive 2008/52/EC triggered the drafting, adoption and entry into force of the Conciliation Act. Most Estonian legislative provisions relevant to mediation are found in the Conciliation Act. Certain more specific procedural questions are, however, governed by the Code of Civil Procedure (e.g. enforcement of a mediated agreement).
Infrastructure	Mediation is to a large extent a self-regulated industry. The law does not require mediators to have particular qualifications or experience. Training and schooling of mediators is voluntary and normally sought by mediators at their own expense from private institutions. Certain specific requirements have been adopted in relation to lawyers providing mediation services (only attorneys-at-law are allowed to be mediators; assistants to attorneys-at-law are not). Oversight by state institutions only applies to notaries and attorneys-at-law providing mediation services.
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. The Courts cannot force parties to mediate but the Code of Civil Procedure establishes the Court's obligation to settle a matter or a part thereof by a compromise or in another manner by agreement of the parties if this is reasonable in the opinion of the Court. For that purpose, the Court can encourage mediation and even order the parties to mediate considering the circumstances of the case and the proceedings.
Effectiveness and enforceability of contractual provisions	Estonia lacks notable precedents regarding the enforcement of an agreement to mediate. Generally, the Court would be unlikely to enforce a simple agreement to mediate. However, it is uncertain how the Court would rule where parties have agreed to submit any dispute between them to a defined mediation process before litigation can be commenced.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation has been available to parties as a dispute resolution mechanism acknowledged and regulated by law since 2010. However, the parties are generally not informed of its availability and the specifics of the procedure. There is typically a willingness to try mediation where it is recommended to parties either by their legal counsel or by the Court. Parties are likely to show more enthusiasm towards mediation when they are introduced to its benefits and when they are made aware of the success stories.

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France

Mediation culture	For a long time, mediation has been confused with other 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 provided for in 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 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. Two relevant changes in legislation occurred in 2015: ■ The parties to a dispute must try to settle it amicably (by any means of their choice) before resorting to courts. They must indicate that their attempts to reach an amicable settlement have failed in their writ of summons. If they have not, the court may propose a mediation or ADR techniques. Although the parties are at liberty to refuse, this new legislation is likely to increase the use of mediation. ■ Consumers now have an option to resolve their disputes through mediation (free of charge). Mediators must remain independent, impartial, neutral and competent. They are registered on a special list and are accountable to a supervisory body.
Infrastructure	There is at least one mediation centre per region in France. The most prominent centre in domestic disputes 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 propose judicial mediation to the parties regarding the whole or part of a dispute. The mediator is appointed by the courts. 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 provisions	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. This was confirmed by a landmark decision of the Supreme Court on 12 December 2014. 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 commentators consider that settlements reached in mediation should be enforceable subject only to public policy considerations.
How is mediation likely to develop in this jurisdiction in the medium term?	The use of the mediation (contractual or otherwise) has already increased in civil and commercial litigation. It may extend to other fields (e.g. consumer disputes). Thanks to the quality of the mediation centres and the visibility they have gained in recent years, mediation is likely to be increasingly used in France.

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Germany

Mediation culture	Mediation has been an accepted method of ADR 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 of a judicial framework impaired the standing of mediation in the public eye. These impediments have been removed by the law to promote mediation and other forms of ADR of 26 July 2012 (the "**Mediation Law**"). Conciliation is also recognised in Germany. Several conciliation boards dealing in particular with the amicable resolution of consumer-related conflicts prior to litigation exist. These conciliation boards are mostly organised by professional bodies and therefore define their competence according to the relevant business area. Conciliation is also frequently used in collective negotiations. An example for a successful conciliation is the conciliation conducted between the German Rail (*Deutsche Bahn*) and the trade union for train drivers which put an end to major train driver strikes in Germany.
Legal and regulatory framework	There is generally no compulsory mediation or conciliation for civil law disputes in Germany. Exceptions apply, however, in individual German states (*Länder*) for very small and/or very personal claims such as neighbourhood disputes and defamation claims, which may be subject to mandatory conciliation prior to litigation in the given German state. 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 ADR. 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 in the event of successful mediation proceedings. ■ Mediators have a statutory obligation of secrecy.
Infrastructure	There are numerous mediation associations, such as local Chambers of Commerce and the Federal Association of Mediators. Such associations provide codes of procedure for mediation proceedings and offer 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	German state courts are very supportive of mediation. They take seriously their duty to make the parties aware of mediation and other means of ADR and often 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 truly believe in mediation and make an effort to convince the parties to at least try to find a solution through mediation. No additional court fees arise in the case of mediations organised by the courts themselves and conducted by judges educated as mediators. A stay of the proceedings that gave rise to the mediation is generally granted.
Effectiveness and enforceability of contractual provisions	If a contract contains a so-called mediation clause that states that mediation proceedings are to be initiated before litigation, a claim with a state court may be considered inadmissible if the parties did not comply with such a clause and mediation has not been initiated. 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, or – under certain circumstances – before a lawyer who is admitted to the bar.
How is mediation likely to develop in this jurisdiction in the medium term?	While statistics have so far **not** shown that the Mediation Law has had the effect that significantly more mediations are conducted in Germany, mediation has certainly become better known. According to the 2015 edition of a survey commissioned every year by a German legal insurance company (so-called "*Roland Report*"), two thirds of the German population were by then aware of the fact that a dispute may be resolved by means of mediation – the highest number ever. The number is expected to rise. This should in the medium term have the effect that more mediation proceedings will be conducted. Also, the DIS actively promotes its ADR services: as a result, more DIS mediations and conciliations seem likely. In 2015, one mediation and six conciliations were registered under the auspices of the DIS. In January 2014, the German Federal Ministry of Justice presented a draft regulation concerning the education of certified mediators which is to complement the existing Mediation Law. According to the draft, a certified mediator must continue training (minimum of 20 hours in two years) and handle at least four mediation proceedings every two years to keep his/her title. The draft has yet to come into force. A new law regarding the resolution of consumer disputes (*Verbraucherstreitbeilegungsgesetz*, "**VSBG**") entered into force in April 2016. The VSBG implements the EU Directive 2013/11/EU on ADR for consumer disputes. It puts an emphasis on conciliation as opposed to mediation. This may suggest that the legislator considers an ADR method typically leading to a concrete proposal made by a third party to be more suitable for consumer complaints. The VSBG applies to consumer ADR proceedings conducted before private and public conciliation boards established in accordance with its provisions. It does not apply to any conciliation boards which have been established by one single company or a group of companies. The VSBG aims at ensuring that independent and neutral conciliators engage in consumer disputes. Existing conciliation boards will have to make sure that they meet this standard. The VSBG will likely lead to increasing numbers of conciliations in consumer-related matters and, thus, generally enhance the acceptance of ADR in Germany.

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Hong Kong

Mediation culture	Mediation was introduced in Hong Kong over 20 years ago when the Hong Kong Mediation Council (a division of the Hong Kong International Arbitration Centre) was set up in 1994. It has proven to be very successful in resolving all types of disputes, especially commercial and civil disputes. Mediation is also part of the arbitral process. Parties to litigation and arbitration accept mediation as a useful process for resolving disputes on commercial terms and saving time, costs, delay and stress. Conciliation, expert determination and adjudication are also available but are more commonly used in employment and construction disputes.
Legal and regulatory framework	Mediation is not compulsory in Hong Kong. However, the revised Rules of the High Court which came into effect in April 2009 as part of the Civil Justice Reform ("**CJR**") specifically provide for the facilitation of settlement of disputes. Whilst the Courts do not have any power to compel parties to mediate, the judiciary is in strong support of mediation (as well as other modes of ADR) and therefore the Courts do encourage and facilitate the parties to use mediation where there is a reasonable prospect of resolving a dispute by mediation. Following the CJR, parties often agree to attempt mediation without intervention by the Courts. Mediation sessions are conducted by independent mediators appointed by the parties. Under a Practice Direction applicable to most civil proceedings begun by writ ("**PD 31**"), each legally represented party is required to file a Mediation Certificate indicating whether or not he/she is willing to attempt mediation. The Mediation Ordinance, which came into force on 1 January 2013, further aims to promote, encourage and facilitate the resolution of disputes by mediation in Hong Kong, and to protect the confidential nature of mediation communications.
Infrastructure	There is a body of experienced mediators available in Hong Kong. The Hong Kong Mediation Accreditation Association Limited (the "**HKMAAL**"), the Hong Kong International Arbitration Centre (the "**HKIAC**") and the Law Society of Hong Kong all maintain panels of accredited mediators accessible to the public. The HKMAAL is the mediation accreditation body in Hong Kong. Its role is: (i) to set standards for accredited mediators, supervisors, assessors, trainers, coaches and other professionals involved in mediation in Hong Kong, and to accredit them on satisfying the requisite standards; (ii) to set standards for relevant mediation training courses in Hong Kong, and to approve them on satisfying the requisite standards; and (iii) to promote a culture of best practice and professionalism in mediation in Hong Kong. Suitable venues for mediation are available from a number of service providers such as the HKIAC, the Hong Kong Efficient Legal Professional Mediation Centre and Hong Kong Mediation Services Limited.
Judicial support	Through case law and PD 31, the Courts have repeatedly sent out strong messages to the legal profession on the importance of mediation. Under the CJR, the Courts have a duty to actively manage cases. Active case management includes encouraging parties to use an ADR procedure, including mediation, if the Courts consider that appropriate, and facilitating the use of such a procedure. The Courts may stay proceedings, adjourn a hearing or make provision in a procedural timetable to allow mediation to take place. However, the Courts also have to ensure that cases are dealt with as expeditiously as reasonably practicable. Therefore, whilst the Courts do encourage parties to mediate, it does not necessarily mean all court proceedings, including milestone events, have to be stayed. The Courts will take into account the time needed for mediation and may direct litigation to proceed notwithstanding that the parties will mediate. PD 31 also 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 provisions	Unlike arbitration agreements, there are no statutory provisions to deal with the enforceability of mediation agreements in Hong Kong. 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.
How is mediation likely to develop in this jurisdiction in the medium term?	In recent years, mediation has become a widely accepted mode of ADR in Hong Kong with a rise in its success rate. According to statistics collected by the Judiciary, in 2014, the success rate of mediation was 48% for cases in the Court of First Instances compared to 45% in 2013 and 38% in 2012. For the District Court, the success rate of mediation was 45% in 2014, and 42% in 2013 and 2012. It is anticipated that the number of cases resolved through mediation will continue to rise as attempts to mediate increase and the experience of mediators also increase.

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India

Mediation culture	In India, mediation has historical roots and gained popularity during pre-British Rule. The efforts to popularise meditation have recently gained significance as the judiciary is taking the lead step in encouraging its use. Mediation centres have been established in many districts and High Courts in India. The Mediation and Conciliation Project Committee ("**MCPC**") consisting of Supreme Court and High Court Judges and Senior Advocates is taking the lead in evolving policy matters relating to the mediation. However, India is yet to enact a law which specifically deals with mediation.
Legal and regulatory framework	Section 89 and Order X Rule 1A of the Code of Civil Procedure, 1908 ("**CPC**") empowers judges to refer a matter to mediation, conciliation or arbitration. Court-annexed Mediation and Conciliation centres have now been established at several courts in India and the courts have started referring cases to such centres. It is noteworthy that the Arbitration and Conciliation Act, 1996, the principal act for ADR in India, deals with conciliation but does not deal specifically with mediation.
Infrastructure	The MCPC requires that 40 hours of training and 10 hours of actual mediation be undertaken in order for a mediator to be able to be entrusted with the task of mediating disputes. The MCPC organises mediation training programmes, awareness programmes and training of trainers programmes regularly. Court annexed mediation centres and various private institutions such as LCIA-India also provide mediation services.
Judicial support	The judiciary has taken the lead role in popularising mediation. Meditation has a legal affirmation now and it is seen in an increasing number of cases. The Supreme Court of India has held that judicial referral to mediation, conciliation and arbitration is mandatory. This has made the mediation process speedier and more harmonized. In order to prevent misuse of such proceedings, the judge, when referring the matter, lists the case for further proceedings on a specific date and grants time to complete the mediation process as considered necessary.
Effectiveness and enforceability of contractual provisions	The court will ordinarily recognise an agreement to mediate under Section 89 of the CPC since it evidences elements of settlement which may be acceptable to parties. Any settlement reached in a case that is referred for mediation during the course of litigation is required to be in writing, signed by the concerned parties and filed in court for the passing of an appropriate order. Mediation is also used as the first recourse in a multi-layered dispute resolution clause in most of the transaction documents and agreements, failing which the dispute is referred to arbitration.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is in the process of becoming well established in India. The judiciary's support in giving the system legitimacy and increased acceptability by public are the primary reasons for growth of mediation in India. Considering the backlog of cases in India, mediation and other ADR mechanisms are expected to develop rapidly in near future.

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Indonesia

Mediation culture	Since 2003, undertaking court-ordered mediation prior to civil court proceedings has become an integral part of the Indonesian court process. However, despite its many benefits, the mediation process is widely viewed as a formality that must be dispensed with before court proceedings can begin. Voluntary mediation as a means of resolving disputes, while permissible, is still in its infancy in Indonesia and is not frequently relied on privately.
Legal and regulatory framework	Under a 2016 Supreme Court regulation, mediation must be undertaken before a civil case can be heard by the appointed panel of judges, with certain exceptions, among others cases that must be decided within a specified time frame such as bankruptcy and labour disputes. If the disputing parties do not act in good faith during this mandatory mediation process (for example, if a plaintiff fails to attend a mediation session without a valid excuse after being properly summoned twice), the judges may declare the lawsuit unacceptable, which will result in the lawsuit being discontinued.
Infrastructure	Courts maintain a list of approved mediators, primarily consisting of those certified by the National Mediation Centre or judges of the relevant courts. For court-ordered mediation, the venues range from rooms in courts of first instance to suitable out-of-court venues as may be agreed by the parties. Court-ordered mediation is closed to the public unless otherwise agreed by the parties. Indonesia has several mediation institutions, including the National Mediation Centre and the Indonesia Mediation Board, which are accredited by the Supreme Court, and various general industry-specific mediation institutions for consumer disputes, particularly in the financial services sector.
Judicial support	By virtue of the 2016 Supreme Court regulation, judges in the first instance court are required to order parties to mediate, and will stay the proceedings to allow the mediation to take place. Even if the mediation fails and the cases are heard in court, the parties are encouraged to reach an amicable settlement throughout the court proceedings.
Effectiveness and enforceability of contractual provisions	Generally speaking, even where parties have a contractual provision in an agreement to mediate, the court is not empowered to stay litigation proceedings and force the parties to mediate. However, as explained above, at the beginning of a civil court proceeding, the judges are required to order the parties to undertake mediation before the case is heard in court.
How is mediation likely to develop in this jurisdiction in the medium term?	While court-ordered mediation is now standard procedure in civil court proceedings, voluntary mediation is not well established, and is a long way from becoming a preferred choice of dispute resolution in Indonesia.

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Ireland

Mediation culture	Mediation is well-established in Ireland and is increasingly used or considered as an ADR process, particularly in the commercial context. The Irish judiciary encourage the use of ADR for the resolution of appropriate civil disputes and parties generally accept that mediation can be an effective process to resolve certain disputes, while potentially saving time and costs.
Legal and regulatory framework	Rules which govern the procedure before the superior courts provide that a judge may recommend that parties consider mediation. More commonly, however, one party may simply propose to the other party (through their legal representatives) that the dispute be mediated. Courts have jurisdiction, with the parties' consent, to adjourn proceedings and invite the parties to use mediation. Parties themselves can also request an adjournment of proceedings to explore mediation should they so agree. In practice, a large degree of deference is shown to a judge's directions in relation to referring a dispute to mediation. Should a party unreasonably refuse to accept another party's proposal to enter into mediation, a judge may impose cost sanctions on that party. However, to date there is no reported case law of a judge imposing cost sanctions or identifying circumstances in which such cost sanctions might be imposed. Those parts of the EU Mediation Directive 2008/52/EC not already applied in Irish law were incorporated in 2011.
Infrastructure	There are a number of established organisations that provide mediation services. The Law Society of Ireland and the Bar Council of Ireland also assist parties to find accredited mediators. Suitable venues and experienced mediators are widely available.
Judicial support	The judges of the Irish courts are supportive of mediation and are prepared to adjourn proceedings in order to facilitate mediation taking place. The High Court and the Commercial Court have the power to adjourn proceedings to refer a dispute to mediation on the application of one of the parties or of the judge's own motion. The High Court may also invite the parties to attend an information session on mediation. Irish courts do not order mandatory mediation (except in the limited circumstances discussed below) on the premise that its voluntary nature ought to be respected to ensure effectiveness. The exception to this is personal injury cases. In such cases the High Court can direct parties to mediation even where one party is opposed to it. The court cannot, however, make this direction on its own motion. It can only do so on the application of a party. A 2015 Court of Appeal case set aside a High Court order compelling parties in a personal injury case to mediate. In so doing it stated that where a court considers making an order compelling mediation in a personal injury case, it should be satisfied that mediation will in fact assist the parties in reaching settlement and the courts should be slow to invoke mediation where the parties themselves have not voluntarily attempted to settle the case. The decision also highlighted the importance of seeking mediation at an early stage in the proceedings. Irish courts only refer cases to mediation and do not conduct mediations themselves or provide the mediator or facilities.
Effectiveness and enforceability of contractual provisions	There is currently no statutory provision providing for a stay in proceedings where there is a mediation clause in a contract between the parties. There is jurisprudence, however, that indicates Irish courts are willing to give effect to an ADR clause, such as a mediation clause. (if sufficiently certain), in which case a court may stay proceedings. Written mediation settlement agreements can be enforced through application to the courts. There is a six year time limit on applications for enforcement of mediation agreements.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediations increased by 739% between 2003 and 2012 and 73% of all mediations surveyed reached agreement, according to the CEDR Ireland/ICMA Mediation Audit 2013. This trend seems likely to continue given: ■ the court's ability to award costs for unreasonably failing or refusing to participate in proposed mediation; and ■ the willingness of parties to embrace mediation as success stories proliferate. There are proposals to further reform the rules of civil procedure in Ireland to firmly embed mediation within the legal system and provide wider powers to the courts to award costs against parties who unreasonably refuse to mediate. The proposals include provision for a Code of Practice for Mediators to address issues such as confidentiality of the mediation process, ethical standards, qualification requirements, the manner in which fees and costs should be determined and procedures for redress. The proposals also provide that it is for the parties to a mediation to determine whether any agreement reached is to be enforceable between them. However a written mediation agreement signed by the parties can be enforced as a contract at law. If these proposals are enacted into law, this will provide a legislative framework for mediation and will also bring mediation firmly within the rules on civil procedure.

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Italy

Mediation culture	Mediation was introduced as a form of ADR by legislative decree n. 28/2010 (the "**Mediation Law**") as an attempt by the legislators to reduce the flow of new cases into the judicial system. However, parties to litigation remain reluctant to opt for out-of-court resolutions; not many agreements are reached through mediation and parties often fail to appear. There have yet to be any significant cases settled through mediation. This is in part because of confidentiality issues, but mostly because of lack of confidence in mediators' competence and expertise. Recourse to voluntary mediation as a means of resolving disputes is still uncommon. Another form of ADR in Italy, involving settlement negotiation with the assistance of lawyers ("*Negoziazione Assistita*"), provides that each party is entitled to invite the other to attempt an amicable settlement of the dispute in good faith. The types of dispute which are compulsorily subject to such a settlement attempt before going to trial relate to damages claims arising out of certain vehicle accidents and claims for the collection of monies up to Euro 50,000.
Legal and regulatory framework	In certain cases, including property, inheritance, family law, and some contractual disputes, litigants are obliged to participate in mediation proceedings before going to court ("*mediazione obbligatoria*"). Mediation may also be ordered by the court at the judge's discretion on the basis of the nature and status of the case ("*mediazione delegata*"). In addition, parties may agree to submit their dispute to a mediator by way of a specific contractual provision.
Infrastructure	A special register held by the Ministry of Justice lists the approved bodies, both public and private, which may conduct mediation. Courts, bar associations and other professional orders (including the Chamber of Commerce) may also provide mediation services. The professional bodies which conduct mediation have their own procedural rules and ethical codes, and are required to adopt adequate procedures to ensure data confidentiality and privacy of communications. Lawyers may act as mediators, as well as non-lawyers with a university degree who have attended a training course on mediation. Although the law provides for continuing education for mediators, there is still scepticism around mediation generally and mediators, in particular, are not perceived to be experts.
Judicial support	Lawyers are required to inform their client of the possibility of using mediation proceedings and the consequential tax relief possibilities. When parties who have voluntary agreed to submit their dispute to a mediator or where corporate documents provide for ADR, or the claim is subject to mandatory mediation, instead submit the claim to the court without mediation having been attempted, the judge will grant the parties time to attempt mediation. The judge will adjourn proceedings for three months, which is the maximum duration of the mediation process under the Mediation Law, to allow mediation to take place. A refusal to participate in mediation without reasonable grounds may be used as a prima facie evidence in trial and, in certain cases may lead to adverse costs consequences. A refusal – without any justification – to accept the mediator's proposal or judge's invitation to enter into mediation, may result in adverse cost consequences at the end of litigation.
Effectiveness and enforceability of contractual provisions	The Mediation Law states that a mediation agreement is enforceable among parties. The written agreement reached by the parties as a result of the mediation process will be registered with the relevant mediation body and will be enforceable between the parties insofar as it does not violate the public order or any binding laws.
How is mediation likely to develop in this jurisdiction in the medium term?	Over the last few years the number of cases which have been resolved through mediation has increased. Mediation culture is improving due to the introduction of mandatory mediation; however, there is still room for further development. According to a report released by the Ministry of Justice in relation to the first half of 2015, in 45% of the cases parties invited to mediation appeared in front of the mediator to commence the out-of-court proceedings. Of that 45%, only in 22% of the cases did the parties reach an agreement.

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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 three ways: ■ 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. ■ Court-ordered mediation: The Civil Mediation Act 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. Court-ordered mediation is used frequently: in 2015 for example, 43,862 court-ordered mediations were commenced, 44,392 were completed and 10,006 were ongoing. ■ Private mediation: In 2007, the Act on Promotion of Use of Alternative Dispute Resolution (the "**ADR Act**") 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 "**JCAA**").
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 mediation is provided through the court system. International commercial mediation through the JCAA: A mediator can be appointed by the parties by mutual agreement. Otherwise, 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 equally applicable to the 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 provisions	Even where parties have a contractual provision to mediate, a Japanese court may not necessarily suspend or dismiss already-commenced litigation proceedings. There are no statutory provisions or commonly understood views with respect to the effectiveness and enforceability of contractual provisions to mediate.
How is mediation likely to develop in this jurisdiction in the medium term?	Although the ADR Act was established in 2007 with a view to promote private mediation, it appears that private mediation is unlikely to become well-used in the medium term given that only around 1,000 cases have been commenced in recent years and the number of new applications has been decreasing year-on-year. On the other hand, court-ordered mediation continues to be used regularly and there is nothing to indicate that there will be a change in this regard. No new legislation with respect to mediation is anticipated to be introduced in the near future.

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Jersey

Mediation culture	Mediation is well-established in Jersey in all types of disputes, including commercial disputes. In matters of low value (under £10,000), which are heard in a division of the Court known as the "*Petty Debts Court*", current practice is for all disputes to be referred to mediation unless there is clearly no point in doing so. Generally, there is a strong culture favouring mediation, and the efficacy of mediation as a means of saving expense is recognised and accepted by parties to litigation and practitioners alike. Mediation will usually be conducted as a means of a private resolution of the dispute. It is, therefore, difficult to assess the number of commercial matters that are mediated either successfully or unsuccessfully. However, our experience and understanding is that many commercial disputes are subject to mediation.
Legal and regulatory framework	Rule 6/28 of the Royal Court Rules (Jersey's procedural rules) empowers the Royal Court to stay proceedings for such period as it thinks fit to enable the parties to try to settle the proceedings by ADR. This can be done at the request of the parties, or on the Court's own motion. In our experience, whilst the Court may order a stay for the parties to consider ADR, it will not specifically order the parties to mediate. The Court can, however, compel the parties to report back to the Court on progress.
Infrastructure	There are accredited mediators within Jersey, including mediators accredited by the Centre for Effective Dispute Resolution. These mediators tend to operate on a part-time basis. In larger commercial matters parties will generally use full-time mediators in England & Wales, especially those who are, or have been, senior members of the bar or bench. This is because: (i) English law is persuasive in many areas of Jersey law (especially trust, company and tort law); (ii) some of Jersey's own judges (for example, Jersey Court of Appeal judges) are drawn from the English bar; and (iii) the experience of mediators in England & Wales is in general greater than in Jersey.
Judicial support	Mediation has been endorsed by the Royal Court in case law as a cost-effective and appropriate way to resolve many types of dispute. The Royal Court will, as a general rule, favour any desire to mediate and will frequently use its broad case-management powers to allow time for such mediation to take place. Further, the Royal Court has indicated that lawyers in Jersey should routinely consider whether mediation is a suitable means for resolving a dispute. The Royal Court has also held that costs may be ordered on an indemnity basis against a losing party who has unreasonably refused to mediate, or denied to a successful party. The burden is on the party seeking the award to prove that the refusal was unreasonable. When determining the reasonableness of the refusal the Royal Court will consider: (i) whether mediation has a reasonable prospect of success; (ii) the character of the litigants; (iii) whether mediation is a proportionate expense; and (iv) the effect of any delay caused.
Effectiveness and enforceability of contractual provisions	A bare agreement to negotiate will lack the necessary characteristics required for contractual formation under Jersey law, unless it is objectively certain in the context of the particular case. Where parties have agreed to submit a dispute to mediation (or other form of ADR) before litigation can be commenced, then the Royal Court may use its jurisdiction to stay proceedings to allow such mediation to take place.
How is mediation likely to develop in this jurisdiction in the medium term?	At the time of writing, there is a consultation process underway regarding changes to the Royal Court Rules. In relation to mediation, there are two proposed changes. First, the issuance of a Practice Direction and amendment to the prescribed form for directions, requiring the parties to have considered whether the dispute is suitable for mediation. Secondly, an increase in the threshold for the Petty Debts Court (to £30,000), meaning more cases would be caught by the standard referral to mediation.

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Latvia

Mediation culture	Mediation as a means of dispute resolution under Latvian law was introduced in the Mediation Law which transposed the EU Mediation Directive 2008/52/EC and came into force as of 1 January 2015. This law provides a legal framework for mediation and applies to disputes in civil, family, commercial and employment matters. Mediation has a relatively short history in Latvia and therefore has not been widely accepted as mainstream method of dispute resolution. Amendments to the Civil Procedure Law made in 2014 oblige judges to inform the parties about mediation and to offer to use it as a means of dispute resolution. Since then, the number of initiated mediations has increased.
Legal and regulatory framework	The Civil Procedure Law and the Mediation Law, which facilitate the use of mediation as a method of dispute resolution in Latvia, provide the following: ■ Every statement of claim must indicate whether or not the party agrees to use mediation. In addition, a court must notify parties about the possibility of using mediation as an ADR method; ■ Mediation can be carried out by a mediator (a natural person selected freely by the parties who has agreed to conduct the mediation), or by a certified mediator (a mediator who in accordance with the procedures laid down in the laws and regulations has acquired mediation expertise and received a certificate which gives him or her the right to be included in the list of certified mediators). To become a "certified mediator", candidates have to pass certain tests and undertake at least 30 hours of training, be at least 25 years old, have a flawless reputation and have a university degree; ■ All mediators have a statutory obligation of confidentiality. The use of mediation is optional and courts cannot force parties to mediate. The parties may use non-certified mediators for the mediation only if both parties agree and if it is not a court-prescribed mediator.
Infrastructure	There are two mediation associations in Latvia – "Mediation and ADR" and "Integrated Mediation in Latvia" whose purpose is to promote mediation and which private personas and companies may contact if they wish to pursue mediation. Mediations in criminal matters may be carried out only if the mediator has a certificate from the State Probation Service. Certification is awarded by the Council of Certified Mediators. Currently there are 24 certified mediators in Latvia, but more than 30 mediators are practicing without a certificate, which is allowed. If the parties themselves are not able to agree on the selection of a mediator or have not reached an agreement regarding the principles for selecting a mediator, the Council of Certified Mediators has the right to recommend a mediator from the list of certified mediators.
Judicial support	The court must invite the parties to use mediation and must stay proceedings if the parties have agreed to mediate their dispute.
Effectiveness and enforceability of contractual provisions	An agreement to mediate is enforceable and binding on the parties as any other private contract would be. If the parties have included a mediation clause in a contract or have entered into a separate mediation contract, a claim in case of a dispute may be brought to a court after: (i) one party has informed the other party in writing that it has withdrawn from the agreement set out in the contract; (ii) one party has rejected the proposal of the other party to settle disputes by using mediation; or (iii) a mediation has been terminated without agreement and the mediator has issued a certification regarding the outcome of mediation. The Civil Procedure Law provides that a judge must refuse to accept a statement of claim and must leave a claim unadjudicated if the parties have agreed on mediation and if no evidence is submitted that a proposal to mediate was rejected, or that the agreement to mediate was not validly entered into by the parties, or that the mediation has been terminated without reaching an agreement. A settlement agreement agreed in mediation and confirmed by a court decision is enforceable in accordance with the provisions regarding enforcement of court judgments.
How is mediation likely to develop in this jurisdiction in the medium term?	The implementation of a legal framework for mediation in Latvia has not been without controversy. In the latest article devoted to mediation in the Latvian legal journal "*Jurista Vārds*", several Chairmen of local district courts expressed the view that mediation has been implemented without evaluating the economic situation and temperament of the Latvian people. Only a few representatives of the judiciary expressed contrasting views. These beliefs appear to represent the general views of a majority of parties involved in modern dispute resolution, with only a minority believing that mediation is best alternative way of dispute resolutions. Supporters of mediation promote it more often than before. Among other reasons to suggest that mediation will become more attractive in the future are courses on mediation offered by state universities, regular promotion of mediation by state officials and academics, growing number of people involved in mediation and also the courts' obligation to inform the parties about mediation. However, it is clear that it will be an uphill battle to convince many members of the judiciary and society at large that mediation is an equally effective means of dispute resolution as litigation and arbitration.

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Lithuania

Mediation culture	Mediation as an ADR method was introduced in 2003 based on the Canadian mediation model together with the new Code of Civil Procedure of the Republic of Lithuania. The growing sector of non-governmental organisations which provided mediation services and training for mediators was affected as well. Interest in mediation led to pilot mediation projects initiated in courts in 2005, 2007 and 2008. The aim of these projects was to evaluate the availability of mediation in Lithuania and to promote mediation itself. However, these projects led to the conclusion that the application of the mediation method was difficult and inconsistent. Nevertheless, after adopting the EU Mediation Directive 2008/52/EC, Lithuania implemented this in domestic law by enacting the Law on Conciliatory Mediation in Civil Disputes in 2008 (subsequently amended in 2011 and 2015).
Legal and regulatory framework	The mediation process is governed by the Code of Civil Procedure, the Law on Conciliatory Mediation in Civil Disputes, the Mediation Rules of the Republic of Lithuania, and the European Code of Conduct for Mediators. Together, these contain the following main provisions: ■ With the consent of the parties, judicial mediation can take place in the preliminary stage of the court hearing. ■ Parties can agree to resolve a dispute by way of mediation before or during trial. ■ All mediators must be impartial, guarantee confidentiality, and avoid conflicts of interests, although there are no additional special requirements for mediators in out-of-court mediation. ■ Mediators in judicial mediation must undergo training courses in mediation to become members of the Register of Mediators. ■ In order to ensure flexibility of the mediation procedure, the parties are free to choose mediators: this can be settled by agreement of the parties or by a judge in a civil trial in judicial mediation. ■ The duration of mediation sessions is not regulated.
Infrastructure	The first non-governmental organisations started providing mediation services in 1990–2000. Nowadays, the Lithuanian Conflict Prevention Association (*Lietuvos konfliktų prevencijos asociacija*) and Baltic Partners for Change Management provide information related to mediation methods. In addition, the Vilnius Court of Commercial Arbitration provides Rules on Mediation and awards qualifications to mediators.
Judicial support	Because mediation culture is not very well developed yet and is still voluntary, judges are encouraged to provide the parties with information and to suggest mediation as an ADR method. However, judging by heavy workloads in courts, only a minority of cases are settled using mediation. On the other hand, it should be noted that from 2014, mediation has begun to gain traction in the Lithuanian courts. As a result, mediation is expected to become more acceptable and effective in the near future.
Effectiveness and enforceability of contractual provisions	Mediation agreements must be in writing. In addition: ■ If the parties agree to resolve a dispute by way of mediation, they must attempt to resolve the dispute through this procedure before they refer it to court or arbitration. ■ If no time limit for the termination of mediation has been set in the agreement, a party can refer the dispute to court or to arbitration one month after making a written proposal to the other party to resolve the dispute by way of mediation. Mediation agreements are effectively not regulated and are based on the free will of each party. The parties have the right to withdraw from and cancel the mediation procedure at any stage of a trial and continue with standard legal proceedings.
How is mediation likely to develop in this jurisdiction in the medium term?	Despite the fact that mediation is becoming more widespread, there is still an obvious need to promote the mediation method. The lack of financing for such promotion, the small number of professional mediators, and the litigious culture of Lithuanian society all hinder the growth of a mediation culture. Moreover, according to statistics for the year 2014, mediation was used only in 53 cases, with a compromise reached only in 23% of those cases. These figures show that more attention must be paid to the promotion of mediation in the Republic of Lithuania in order to see more encouraging results.

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Luxembourg

Mediation culture	On 24 February 2012, a specific law on mediation in civil and commercial matters (the "**Mediation Law**") was enacted. Mediation has become, over the last years, more common in Luxembourg. It is still mainly used in family disputes and in small criminal matters. However, over the last two years, more and more in civil and commercial matters have been submitted to mediation. Mediation is seen as being quicker, less expensive and more confidential than the ordinary judicial proceedings.
Legal and regulatory framework	The Mediation Law provides 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 Mediation Law provides that during the mediation the procedural timetable is suspended.
Infrastructure	After the Mediation 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 (albeit a rather short one). Since the entry in force of the Mediation Law more and more professionals (and in particular lawyers) have been accredited as mediators, after having completed a specific training.
Judicial support	The courts may invite the parties to use mediation and may stay proceedings while mediation continues.
Effectiveness and enforceability of contractual provisions	The Mediation Law provides that where the parties have included a mediation clause in their contract 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.
How is mediation likely to develop in this jurisdiction in the medium term?	It is generally expected that mediation in Luxembourg will continue to develop over the next years, as it becomes more and more often used in commercial disputes and as the courts start to propose mediation to the parties.

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Malaysia

Mediation culture	Mediation is still relatively new in Malaysia and is gaining traction amongst practitioners especially for personal injury, road accident cases and matrimonial and family disputes. Unfortunately, at the moment there are no comprehensive statistics in relation to mediation in Malaysia.
Legal and regulatory framework	The Mediation Act 2012 (the "**Act**") came into force on 1 August 2012. Its primary purpose was to facilitate, promote and encourage mediation as a method of ADR. A stay of any court or arbitration proceedings is not mandatory and mediation can be undertaken in parallel with litigation or arbitration proceedings. Confidentiality and privilege are express rights under the statute in a mediation. The Act allows for the recording of any settlement agreement as a consent judgment or a judgment of the court. It also absolves mediators of liability for his acts or omissions unless they were fraudulent or involved wilful misconduct. Mediation is not applicable to certain actions as per the Schedule under the Act, e.g provision of the Federal Constitution, judicial review, appeals and criminal matters. The Kuala Lumpur Regional Centre for Arbitration ("**KLRCA**") has its own set of rules called the KLRCA Mediation Rules. These rules apply where they have been expressly agreed to apply and are of procedural application. KLRCA plays a part in facilitating the process if the mediation is conducted under its Rules. The Courts may also order compulsory mediation that will then be carried out under the Kuala Lumpur Court Mediation Centre. If judges function as mediators and mediation under this programme then their services is free of charge.
Infrastructure	The Malaysian Mediation Centre ("**MMC**") was established in 1999 and provides professional mediation services by trained mediators from their Panel of MMC Mediators. It also provides training in mediation techniques and accreditations. Its panel lists approximately 300 mediators throughout Malaysia and it is a member of the Asian Mediation Association. The MMC handles commercial, civil and family disputes. The KLRCA also organises Australian Commercial Disputes Centre ("**ACDC**") Mediation training in Kuala Lumpur. Successful completion merits accreditation as mediator by the ACDC, the Australian National Mediator Accreditation System and are entitled to become members of the KLRCA Mediation panel. The KLRCA's Sulaiman building offers 22 hearing rooms, 12 breakout rooms, state-of-the-art technology for video-conferencing, recording, webcasting etc., a seminar room, law library, business centre facilities, lounge and cafeteria.
Judicial support	Courts do have the power to order mediation. Granting a stay of litigation or arbitral proceedings is not necessary as the mediation can be carried out in parallel to the proceedings. Parties may choose a judge-led mediation or they may agree on a mediator. The Court does take into account the conduct of the parties in relation to any attempt at resolving the cause or matter by mediation.
Effectiveness and enforceability of contractual provisions	Under the Act, settlement agreements may be registered as either a consent judgment or a judgment of the court. Therefore they may be enforced as a court judgment.
How is mediation likely to develop in this jurisdiction in the medium term?	Practitioners are increasingly more likely to propose mediation as a dispute resolution mechanism.

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Mexico

Mediation culture	Mediation in Mexico received a boost of vigor when the amended Constitution of 2010 provided that *"the [secondary] laws shall provide alternative dispute resolution mechanisms. In criminal matters, they shall regulate their application to ensure compensation of damages and establish the cases in which judicial supervision is required"*. This became the first time that an alternative to traditional litigation before Courts of Law was captured by a constitutional provision. The provision will come into force no later than 18 June 2016. Since the constitutional amendment of 2010, mediation is increasingly considered suitable for cases involving family law, commercial and civil matters, and even in some criminal offenses and/or regulated activities, such as midstream activities within the energy sector. The acceptance of the general population and parties to a litigation towards mediation is on the rise. Several public and private mediation facilities have been opened in recent years with growing popularity. In Mexico City alone, mediation has helped 250,000 cases avoid litigation in the past three years. Among these new mediation centers, a clear story of success is the Mexican Institute for Mediation (*Instituto Mexicano de la Mediación*), which provides private services of mediation, and the Center for Alternative Justice that is part of the local courts of Mexico City. International organizations have also made efforts to increase mediation within its areas of service and expertise within Mexico, such as the World Intellectual Property Organization.
Legal and regulatory framework	Judges of civil, family, criminal and juvenile justice within Mexico City are required to inform the parties about availability of free mediation services at the Alternative Justice Center of Mexico City. However, mediation is compulsory for parties to a dispute only if they agreed to use this ADR procedure (for example, insurance policies of small amounts may provide for compulsory mediation once elected by the insured party). In some cases, parties can mediate without court intervention, such as civil or commercial cases. Within the energy sector, parties can submit a dispute for mediation before the Energy Regulatory Commission (an administrative body separate from the judicial system).
Infrastructure	The increased demand for mediation has been accompanied by the establishment of alternative justice centers that depend on and are managed by State Courts, as well as private centers that offer mediation services. Overall, the number of mediators with substantive knowledge of areas relevant to a dispute is rising; this is largely accompanied by an increase in specialist training for mediators.
Judicial support	Mediation is endorsed by the local court system of each State. Some mediation procedures (for example, those administered by the Energy Regulatory Commission) have statutory timeframes that shall be followed by the mediator. Unless provided otherwise in a contract between the parties that come to a dispute, there are no costs for failure to reach an agreement on mediation or failure to mediate, and the general rule consists of each party bearing the costs of mediation (e.g., legal advice).
Effectiveness and enforceability of contractual provisions	To have an enforceable settlement obtained through mediation, parties must reach an agreement, which must meet the formality requirements in civil law for all agreements in civil law. Depending on the matter, the court may supervise the content of the agreement. Such is the case with family matters, whereby the agreement reached between divorcees during mediation needs to be approved by a family judge before its entering into force. In any case, it is recommended that parties state in the agreement that it constitutes a settlement agreement (*convenio de transacción*) that puts end to a dispute and henceforth supersedes all prior agreements reached therefore. This provision will prevent the reopening of the subject matter of the conflict in subsequent disputes or litigations.
How is mediation likely to develop in this jurisdiction in the medium term?	The constitutional reform of 2010 requires federal and local legislations, as well as the court system, to provide legal foundation for full establishment of alternatives to litigation, including mediation. Since access to justice in Mexico is guaranteed at no cost, these alternatives share the same principle and it will make dispute resolution available to more people who, perhaps, favor problem-solving over a judgment based on entitlement or lawfulness. In parallel, the establishment of public mediation centers in more sectors will enable a better knowledge of the benefits of mediation.

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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 6 December 2007, the Moroccan legislature enacted Law n°08-05 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. The settlement is treated as a new contract and is therefore entirely governed by the Moroccan Dahir of Obligations and Contracts (*Dahir formant le Code des Obligations et des Contrats*).
Infrastructure	Although there is not much demand 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 Casablanca International Mediation & Arbitration ("**CIMA**"), (previously known as Euro Mediterranean Center for Mediation and Arbitration) which aims to promote mediation culture and spread information among economic operators (especially small and medium-sized enterprises) regarding the advantages of mediation. The CIMA also keeps a list of potential mediators and participates in their training, in partnership with foreign bodies such as the International Finance Corporation. During the last two years several specific mediation centers have been established in Morocco. These include a mediation centre created by the French Chamber of Commerce and Industry, as well as various sector-oriented or trade-association linked forums.
Judicial support	The settlement agreement reached by the parties following a mediation process has to be signed both by the parties and the mediator. The courts will not order enforcement of a settlement agreement unless it is translated into Arabic or French. 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 a mediation process is pending.
Effectiveness and enforceability of contractual provisions	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.
How is mediation likely to develop in this jurisdiction in the medium term?	Since entry into force of the Law n°08-05 dealing with contractual mediation and arbitration, the practice of mediation and arbitration in Morocco has significantly increased; around 1,000 disputes have been resolved by mutual agreement. Moreover, the Moroccan legislator has shown increasing willingness to develop mediation in Morocco. By way of example, the recent Law n°86-12 dated 24 December 2014 relating to public-private partnerships provides that public-private agreements should provide a conciliation, conventional mediation, or arbitration clause for settlement of disputes between parties.

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Netherlands

Mediation culture	Court proceedings are considered to be a last resort in the Netherlands. Parties are inclined to resolve conflicts through the more traditional methods of dispute resolution, e.g. negotiations and settlement out of court. The use of mediation as an ADR method continues to increase. Mediation has been used to resolve many types of different disputes; in particular, any dispute in which the parties have an ongoing commercial, personal or professional relationship, and which has not yet escalated to the highest levels, is presumed to be suitable for mediation. Mediation is, however, considered less suitable for corporate disputes. A draft bill that would have given substantial powers to judges, allowing them to stay proceedings at any stage of the process and require the parties to initiate mediation instead was withdrawn in June 2015. Nevertheless, the Dutch courts do encourage parties to attempt to resolve their dispute through mediation.
Legal and regulatory framework	The EU Mediation Directive was implemented in the Dutch Civil Code and Code of Civil Procedure towards the end of 2012. However, the relevant provisions only apply to cross-border mediations. There is no specific provision in Dutch law for mediation in the case of purely national disputes. At a national, Dutch law level, three bills concerning specific mediation provisions were presented in 2013. As mentioned above, one of these draft bills, proposing that future cases include a statement in the writ of summons or court petition either confirming that mediation was attempted but failed or explaining why mediation was not attempted, was criticised and withdrawn in June 2015. The other two bills were also withdrawn. In disputes that seem suitable for mediation, the courts may refer the case to mediation. However, parties cannot be forced to participate in mediation against their will. Parties wishing to use mediation are encouraged to include an appropriate mediation clause in their agreement.
Infrastructure	The main mediation institute in the Netherlands is the Mediation Federation Netherlands ("**MfN**"). The focus of the MfN is to safeguard the quality of mediation in the Netherlands. The MfN contains a register of mediators who are compliant with certain quality requirements. An MfN-mediator is bound by specific rules of professional conduct and is subject to the MfN's complaint procedure. As at January 2016, the MfN has over 3,000 registered MfN-mediators experienced in various areas of the law, including corporate and commercial law. The draft bill that was withdrawn in June 2015 also contained provisions for the regulation of mediators as professionals and would have introduced a register of mediators meeting certain quality requirements.
Judicial support	Dutch courts often call parties to an informal hearing during which the court can test the ground for and invite the parties to settle or mediate. The courts may refer cases which they consider suitable for mediation. The mediation referral of a Dutch court is voluntary. If the parties accept the referral, the Dutch court will stay the judicial proceedings and refer the case to external mediators. Each court has a mediation officer, who acts as the link between the courts, the mediators and the parties who elect to mediate. The mediation officer provides the parties with information about the mediation process and assists the parties in the selection of a mediator.
Effectiveness and enforceability of contractual provisions	Mediation requires the co-operation of parties. In the Netherlands, if one of the parties no longer wants to participate in the mediation process, the case will revert back to the court notwithstanding the fact that the parties have agreed to submit a dispute to mediation. Agreements resulting from mediation can be easily enforced under Dutch law. In the case of a court-annexed mediation (i.e. mediation referred by the court as described above), the court can include the settlement agreement in the record of the hearing or in the judgment. In other mediations, parties can have their settlement agreement laid down in a notarial deed.
How is mediation likely to develop in this jurisdiction in the medium term?	To further encourage the use of mediation, a new bill is currently being prepared. The MfN is pressing the Dutch government to speed up the progress of this new bill. It is expected that the new bill will have positive effects on the future development of mediation in the Netherlands, particularly with regard to civil and commercial matters.

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New Zealand

Mediation culture	Mediation is a well established form of dispute resolution in New Zealand. It is an accepted feature of many commercial disputes.
Legal and regulatory framework	In the commercial context, the decision to pursue mediation is typically a matter for the parties to agree. Parties may agree to mediate either before litigation commences (such as by including a dispute resolution clause in their contract), or after proceedings have begun. Confidential communications made in connection with an attempt to mediate a dispute are privileged and protected from disclosure in court proceedings under the Evidence Act 2006. Confidential documents prepared in connection with an attempt to mediate the dispute are also privileged. Provision is made in the legislation governing a number of specialist jurisdictions for the State to provide mediation services, including the Residential Tenancies, Employment Relations and Weathertight Homes Resolution Services Acts. The Family, Environment and Maori Land Courts promote the use of state-funded mediation as a step in resolving disputes before them.
Infrastructure	Experienced mediators are widely available, including full-time professional mediators (some of whom, for mediation of complex commercial disputes, are retired judges). Both the Arbitrators' and Mediators' Institute of New Zealand (**AMINZ**) and LEADRIAMA provide training and accreditation for their members and AMINZ keeps lists from which it makes appointments of mediators when parties to disputes request them to do so. The members of both organisations are covered by by-laws and their members are required to adhere to codes of ethics. Suitable venues for mediation are also widely available.
Judicial support	At the first case management conference of a claim filed in the High Court, the parties are obliged to indicate whether ADR is suitable to try to facilitate settlement prior to trial. The courts are willing to make timetable directions to allow mediation to take place (where asked to do so by the parties). There is also an ability for the courts to facilitate a judicial form of mediation through judicial settlement conferences. In the High Court, such conferences are now only allocated where private mediation is, for some reason, inappropriate. In certain jurisdictions, such as employment law, judges are required to consider whether mediation has taken place before a court hears the matter.
Effectiveness and enforceability of contractual provisions	Commercial contracts may include a dispute resolution clause that requires the parties to the agreement to attend mediation before they are able to proceed to a court for determination of a dispute. If the parties have outlined an agreed mediation process that is sufficiently certain, the New Zealand courts may stay a proceeding until the parties have fulfilled the requirements of that agreed process. The courts may refuse to stay a proceeding if, for example, not all parties to the dispute are parties to the agreement containing the dispute resolution clause, not all the matters in the dispute are covered by the clause, or if there are matters that are likely to hinder the mediation, such as a lack of proper discovery.
How is mediation likely to develop in this jurisdiction in the medium term?	Given the perceived benefits of mediation in terms of time and cost savings, and confidentiality, mediation is likely to remain a key feature of commercial dispute resolution in New Zealand. In specialised jurisdictions it is likely to continue to be used in conjunction with, and as an alternative to, formal legal determination of disputes.

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Poland

Mediation culture	Mediation is suitable for all kinds of disputes that may be resolved by settlement, but is not very common in Poland. Parties to litigation are still reluctant to initiate mediation and most mediations are initiated by the courts. The rate of successful mediations at present appears to be very low, although it is growing. On 1 January 2016 a major change to Polish law making significant amendments to the Polish Code of Civil Procedure (the "**CCP**") and other provisions regulating mediation came into force (the "**New Provisions on Mediation**"). The New Provisions on Mediation are specifically aimed at providing incentives for parties to choose mediation as a way of settling civil disputes.
Legal and regulatory framework	The CCP has had provisions regulating mediation in civil disputes which implement the EU Mediation Directive in place for seven years. Recently, these provisions have been significantly amended by the New Provisions on Mediation. The parties may also agree for mediation in a contract.
Infrastructure	District courts have their own official lists of professional and experienced mediators displayed on their websites. Such listed mediators are required to meet the qualifications prescribed by the New Provisions on Mediation, in particular, to have a clean criminal record and relevant knowledge and experience in the field of mediation. The New Provisions on Mediation also introduced the function of so-called mediation coordinators in district courts, who are to foster efficient cooperation and communication between the judges, parties and mediators and who are also to promote amicable dispute resolution mechanisms. Under the CCP, mediators are bound by privilege and may not testify as witnesses in cases involving facts disclosed during mediation (unless the parties decide otherwise). Mediators are also required to present to the parties a declaration of their impartiality and independence, and to disclose any information that could undermine the trust in them and the mediation process. Additionally, although the mediation culture is not very well developed yet, there are quite a few organisations promoting mediation that 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 specialise in all kinds of mediation.
Judicial support	The CCP as amended by the New Provisions on Mediation provides that a statement of claim filed with a Polish court must contain information about whether before filing it the parties sought amicable settlement, or an explanation of why such attempts were not made. The absence of such an explanation is considered a procedural omission. In the course of the civil proceedings, the judge is obliged to encourage the parties to settle the dispute. The judge may also order a compulsory meeting for the parties, at which the advantages of mediation are to be explained and their awareness about mediation is to be increased. Even if the court refers the parties to mediation, mediation is still voluntary. However, under the New Provisions on Mediation, if a party does not agree to mediation after a court referral without a valid reason, it may be charged the costs of the court proceedings. In the same vein, the court may decide to decrease or exempt from costs the party that was in favour of settling the dispute amicably before the statement of claim was filed.
Effectiveness and enforceability of contractual provisions	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 must be raised before litigation is engaged in (i.e. generally before or simultaneously with the filing of the response to the statement of claim). 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 only then is it enforceable.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation has been developing in important ways in recent years, specifically thanks to governmental efforts, which have led to the introduction of the New Provisions on Mediation. However, as these changes are very recent, it is yet to be determined whether they will increase the popularity of mediation.

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Portugal

Mediation culture	Mediation, although a growing trend, is still not very common in Portugal. The Portuguese government in recent years has made several efforts to promote mediation, including the creation of the "*Julgados de Paz*", a hybrid mediation-litigation court for civil and claims under €15,000. According to the latest report, 82,466 claims have been filed in these hybrid mediation-litigation courts since 2002 with an average in excess of 10,000 claims on the last three years. Parties are starting to favour mediation as an effective, faster and less expensive alternative to resolve their disputes. Mediation is commonly seen as an optimal solution for labour, family and commercial disputes, where the preservation of the parties' relationship is paramount, notwithstanding, informal conciliation or negotiation is still the most used option in detriment of a structured mediation. Mediation practitioners, public and private, are working closely to promote mediation as a viable alternative.
Legal and regulatory framework	In Portugal, parties have the freedom to settle their own disputes. As mediation is a voluntary consensus-based dispute resolution mechanism it cannot be forced to the parties by the Judicial Courts, Mediation may be triggered by the parties' own initiative or by the court's request – provided none of the parties oppose this solution. Initiating mediation will automatically suspend the judicial proceedings for a period not exceeding three months. Portugal has recently enacted a new Mediation Law (Law 29/2013) establishing the core mediation principles as defined by EU Directive 2008/52/EC.
Infrastructure	There is a growing number of mediators in Portugal. There are more than 200 mediators included on the official mediators list, certified by the Justice Ministry and it is estimated there are twice this number of mediators certified by privately accredited centres. Suitable venues for mediation are available at mediation and arbitration centres and also at the *Julgados de Paz*, available in 24 different locations throughout the country.
Judicial support	It is more common to have judicial courts engage directly in conciliation efforts – which is provided for in law (namely article 594 of the Portuguese Civil Procedure Code), than encouraging parties to mediate outside of court, however, it is possible for a judge to send parties to mediation under article 273 of the Civil Procedure Code, provided none of the parties opposes this solution. There are no adverse consequences to a refusal to mediate; however, if parties reach a settlement before the end of the judicial proceedings there is a reduction of the judicial costs.
Effectiveness and enforceability of contractual provisions	Article 4 of the Mediation Law establishes the principle that participation in mediation is voluntary, determining that the parties may, at any time, jointly or unilaterally, revoke their consent to mediate. The court will not enforce a mediation agreement; however, depending on the language of a contract, the court may suspend or even decline jurisdiction if the parties failed demonstrate efforts to pursue mediation prior to commencing proceedings. A settlement obtained through mediation will be enforceable if the legally established criteria are met (Article 9 of the Mediation Law) or if the agreement is confirmed by a court or tribunal.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation in Portugal has been growing consistently in recent years. Given its cost effectiveness, parties have shown increasing willingness to engage in mediation – either through the *Julgados de Paz* or autonomous mediation procedures either before or pending litigation. Judges have shown openness to mediation as an alternative to reduce judicial courts' backlog. We believe commercial and civil will continue to grow in the coming years.

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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 ("**Draft Law**"). The Draft Law, although proposed, has not yet been formally enacted, and the date of enactment is uncertain. In Qatar, alternative dispute resolution services, including mediation, are offered by: ■ the Qatar International Centre for Conciliation and Arbitration ("**QICCA**"), a non-governmental body established in 2006 which offers arbitration and conciliation services; and ■ the Qatar International Court and Dispute Resolution Centre ("**QICDRC**"), which is part of the Qatar Financial Centre Civil and Commercial Court ("**QFC**"). Since 2010, the QICDRC has provided mediation services in partnership with the Centre for Effective Dispute Resolution ("**CEDR**"). Current legislative proposals, once they have been enacted, will allow the QICDRC to cater for a number of adjudication schemes. The developing Q-Construct adjudication scheme deals specifically with disputes involving construction projects.
Legal and regulatory framework	Currently, there is no statutory framework in Qatar for mediation. However, the Draft Law contains provisions concerning "reconciliation", which includes any proceedings in which the parties are assisted by a neutral person to settle their dispute, including mediation. 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 Qatar International Court at the QFC include a mechanism by which the court will encourage parties to resolve their dispute by resorting to mediation. Mediation services are offered prior to and after the commencement of proceedings in the Qatar International Court. The court may at any time adjourn or stay proceedings so that parties can attempt to settle their dispute by mediation.
Infrastructure	The professional title "mediator" is not legally protected in Qatar and there is no official register of mediators. The QICDRC, however, provides venues for mediation and access to a directory of mediators across all commercial specialist areas who are accredited by the CEDR. The QFC has been working closely with the CEDR and a programme for training certified (accredited) mediators, in both Arabic and English, is in place.
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. 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. The QFC Court Rules include provisions under which the QFC may require the parties to use alternative dispute resolutions process, however the criteria for this exercise of power is unclear.
Effectiveness and enforceability of contractual provisions	There are no general provisions of Qatar Law concerning mediation; it is governed by contractual provisions agreed by the parties. The Civil Code allows the parties an absolute right to freedom of contract as long as terms and conditions are not contrary to public policy or against good morals. This position may change, as the Draft Law contains a section on reconciliation in civil and commercial matters, whether local or international.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation as an alternative process for the resolution of civil and commercial disputes is still in its early stages. It is, however, commonly used in the context of public sector contracts where parties meet informally to discuss points of contention. The QICDRC is currently developing a fast track scheme for resolving construction disputes using specialist adjudicators and mediators. Further new developments in the field of mediation are to be expected in the context of the reform of the Commercial and Civil Procedure Code and the enactment of the Draft Law.

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Romania

Mediation culture	Mediation has a relatively short history in Romania and is therefore not yet accepted as a mainstream dispute resolution mechanism. Mediation came to public attention once parties to a dispute became legally bound (prior to commencing legal proceedings before the courts) to attend a mandatory session which described the advantages of mediation. However, this legal requirement was declared unconstitutional in 2014 and mediation has now fully returned to its previous non-binding status. Mediation is currently not often used in practice and therefore no successful examples may be provided so far.
Legal and regulatory framework	Law no. 192 of 16 May 2006, establishes the main provisions concerning the profession of mediator and the organisation and practice of mediation. Government Ordinance no. 38 of 26 August 2015 regulates ADR mechanisms applicable to disputes between consumers and professionals. The applicable Civil Procedure Code provides that in court proceedings, the judge shall recommend/advise the parties to make recourse to mediation. Parties may agree to take part in an information session which describes the advantages of mediation. Once consent is given, attending such a session becomes mandatory for the parties (which may be fined for non-attendance). Nevertheless, mediation is not mandatory. Parties may still refuse to make recourse to mediation after attending an information session.
Infrastructure	The guidelines of the profession of mediator are generally in compliance with European legislation, including the EU Mediation Directive 2008/52/EC. The Mediation Council is the professional body which accredits mediators and records a list of mediators, which is updated on a regular basis and available for public consultation. There are more than 6,500 accredited mediators in Romania. The Mediation Council also develops and supervises training programmes for mediators and elaborates the Code of Ethics and Professional Conduct of Mediators. Recently, the Mediation Council became involved in developing training programmes for trainee judges and prosecutors.
Judicial support	The applicable Civil Procedure Code contains several provisions which give judicial support to mediation. The judge recommends/advises parties to court proceedings to make recourse to mediation in order to amicably solve their dispute. Once the parties agree before the court to attend an information session concerning the advantages of mediation, they cannot rescind their consent without facing fines. This information session may also be held by judges, prosecutors or lawyers and not necessarily by a mediator. However, mediation is not compulsory. If, after the commencement of court proceedings, the parties agree to mediate, such proceedings may be stayed upon the request of the parties until the mediation is completed (e.g. the parties sign a settlement agreement or their negotiations fail).
Effectiveness and enforceability of contractual provisions	An agreement to mediate must contain several mandatory clauses, *inter alia*, the parties' declaration that the mediator informed them of the effects and rules of the mediation procedure and the parties' compliance with the procedural rules applicable to mediation. A settlement agreement reached after a successful mediation is a valid contract between the parties, subject to general rules of contract law. If the mediation takes place during litigation and a settlement is reached by the parties, the court will issue a judgment taking notice of such settlement. This judgment is enforceable without further formalities. The parties may ask for a full refund of court fees if mediation is successful (with some exceptions in relation to land or inheritance disputes).
How is mediation likely to develop in this jurisdiction in the medium term?	From a statistical standpoint, the number of mediation procedures has increased on a yearly basis, even though the numbers remain low. One study has suggested that from 2010 to 2013, courts have recorded only one mediated settlement for every 1,800 judicial rulings. However, if mediation would become more commonly used in Romania, it might help reduce the significant workload of the Romanian courts, making its development beneficial for the entire judicial system.

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Russian Federation

Mediation culture	Mediation is a relatively novel concept in Russian legislation. It remains a rare method of dispute resolution as a result of a lack of trust in mediation due to its novelty, a low awareness of its benefits among the general public, an unwillingness to share confidential information with mediators and an absence of well-known professional mediators.
Legal and regulatory framework	Prior to 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 Russia. Civil, family and employment disputes (with the exception of collective employment disputes) can now be settled 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 has been filed, the parties are only entitled to engage professional mediators. These mediators are obliged to keep all information obtained in the course of mediation confidential.
Infrastructure	In 2011 the federal government adopted a training programme for mediators, who must pass a special examination to obtain the status of professional mediator. However, there are still no widely recognised, respected and experienced mediators in Russia. As of 2014, institutions that facilitate mediation had been established in 60 federal subjects of the Russian Federation; however, they are not very well-known to the general public.
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, at its discretion, postpone the hearing upon the parties' joint request.
Effectiveness and enforceability of contractual provisions	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 court relief is required 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, it may only be enforced through a claim for breach of contract.
How is mediation likely to develop in this jurisdiction in the medium term?	It can be expected that, in the medium term, the number of institutions facilitating mediation will grow, continuing the trend of the past several years. It also seems likely that parties will increasingly be willing to have their disputes settled through mediation, as the general level of awareness of mediation procedures and their benefits has risen as a result of various scholarly articles that have appeared since the Law on Mediation was enacted.

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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. Parties are also required to submit an ADR Form which certifies that their lawyers have explained the different ADR options to them. Civil claims in the State Courts are placed on a "recommended ADR" track (from which parties may opt out). In the High Court and the Court of Appeal, the "ADR Offer procedure" encourages litigants to consider mediation at an early stage of court proceedings. 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 for claims of S$250,000 or less in value. This type of mediation is mainly carried out by the State Courts and is coordinated by the State Courts Centre for Dispute Resolution. Court-based mediations are conducted by judge mediators and volunteer mediators who are guided by the State Courts Code of Ethics and Principles and Basic Principles on Court Mediation, and are carried out free of charge save for civil claims that are S$60,000 or more in value. Private mediation in Singapore is mainly carried out by the Singapore Mediation Centre ("**SMC**") and the Singapore International Mediation Centre ("**SIMC**"). The SMC focuses on domestic commercial disputes, whereas the SIMC focuses on international commercial disputes. Both maintain their own panels of mediators. SIMC mediators are required to be accredited by the Singapore International Mediation Institute. Under SIMC mediation, settlement agreements may be made consent awards under an Arb-Med-Arb Protocol between the Singapore International Arbitration Centre and the SIMC.
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 State Courts undergo mediation. Mediation is compulsory in certain family law disputes involving minors and the Courts are looking to promote mediation as a primary step in resolving medical malpractice disputes. The Courts can impose costs sanctions for an unreasonable refusal to mediate.
Effectiveness and enforceability of contractual provisions	The Courts may be willing to enforce a contractual provision to mediate provided that the obligation is sufficiently well defined. 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 an agreement to resolve disputes by an alternative method.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation looks set to remain a popular and effective method of dispute resolution in Singapore. In 2013 and 2014, over 13,500 cases were mediated via the State Courts, and more than 90% of these were successfully settled. In 2014, twelve pending appeals were referred by the Court of Appeal to the SMC, and more than half of these were successfully settled. The SMC also experienced a 57% increase in mediation matters and a 65% increase in adjudication applications in 2014. As of March 2016, the Ministry of Law has begun a public consultation on the Draft Mediation Bill, which provides for an explicit statutory basis for parties to apply to Court for a stay of proceedings where parties enter into a mediation agreement, the enforceability of mediated settlements by the Courts, as well as the confidentiality of mediation proceedings.

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Slovak Republic

Mediation culture	In recent years, growing emphasis has been placed on out-of-court solutions to conflicts that can be solved by agreement between the parties. Mediation is one of the fastest-growing ADR methods because of its informality, relative cost-effectiveness, confidentiality and ability to preserve business relationships that might otherwise have been damaged by litigation.
Legal and regulatory framework	Mediation is directly incorporated into the Slovak legal system through Act No. 420/2004 Coll., as amended, which came into effect on 1 September 2004 (the "**Slovak Mediation Act**"). The Slovak Mediation Act provides a legal framework for mediation and applies to disputes that arise out of civil, family, commercial and employment relationships, with an emphasis on consumer disputes. It also implemented the EU Mediation Directive into Slovak law. The Act gives the courts the authority to request that parties appear before a registered mediator and try to settle their dispute through mediation. In addition, parties are encouraged to opt for mediation by the considerable amount of court fees (up to 90%) that can be saved if the dispute is resolved by a settlement approved by the court. Recently, Act No. 390/2015 Coll. (which entered into effect on 1 January 2016) (the "**Amendment**") made extensive changes to the Slovak Mediation Act.
Infrastructure	The Amendment imposed additional obligations on mediators and mediation centres. For example, new mediation skills training requirements were established and stricter requirements regarding the knowledge of effective law were introduced. As a prerequisite to qualification, mediators are required to have a master's degree, the absence of a criminal record and a certificate proving completion of a mediation training course and the passing of the mediation test administered by universities and mediation centres. The Amendment has vested in the Slovak Ministry of Justice, which maintains a register of mediators, the power to remove a mediator from the register or to temporarily suspend a mediator's licence to mediate. The Amendment has also imposed additional requirements on mediation centres, such as the obligatory establishment of a web page and the preparation of annual reports on their performance.
Judicial support	As a general principle, it is the judge's role to guide disputes 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. The newly adopted Civil Procedure Codes, which will become effective as of 1 July 2016, also refer to the use of mediation in preliminary hearings, divorce cases, child care disputes, and the enforcement of judicial decisions in matters that relate to children.
Effectiveness and enforceability of contractual provisions	An agreement to mediate between parties to a dispute is enforceable and effective in the same way as any other private contract. Mediation is perceived as being based on the free will of its participants and can therefore be 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 agreement reached through mediation to a court for approval or if the parties execute the agreement as an enforcement agreement in the form of a national deed, the agreement can be enforced in the same way as a judgement. The Amendment is expected to provide a greater level of legal protection to the general public, especially in relation to consumer issues. Its provisions simplify the initial mediation process, decrease mediation costs, and increase the availability of mediators and mediation centres to the broader public.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is gaining in popularity with the broader public due to the fact that court enforcement processes are currently unpredictable, there is only a small degree of legal certainty, and court proceedings are often lengthy. This trend can be also seen in the adoption of provisions in the new Civil Procedure Codes requiring mediation before approaching the courts and in the adoption of a new Act on Alternative Consumer Dispute Resolution, which only applies if the same consumer dispute has not been resolved by the conclusion of a mediation agreement. The relatively high number of mediators and mediation centres in Slovak Republic (as of 28 January 2016 there were 1,271 mediators and 52 mediation centres) also speaks to the continued development of this trend in the future. Overall, the above mentioned changes are aimed at having a positive effect on the business environment in the Slovak Republic as well as providing a greater level of legal protection to the general public.

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South Africa

Mediation culture	Mediation has become the more sensible and practical form of ADR in South Africa. Whilst it began with labour and family disputes, it has emerged as a popular process for resolving commercial disputes of all types. With the emergence of Africa as an important trade and investment area, with many countries worldwide and the United Nations participating actively in Africa in diverse fields, cross-border mediations of both an African and an international flavour are being regarded as the preferent route for dispute resolution.
Legal and regulatory framework	There is currently limited provision for court-annexed mediation. This is confined to South Africa's lower courts and is being sampled in Johannesburg. There is however a pre-trial conference rule in our High Court system in terms of which mediation needs to be considered as a step prior to the trial stage.
Infrastructure	As mediation, especially in commercial matters, has become more popular and is being extensively utilised, there are now many experienced mediators in different fields. Reference can be made for the appointment of mediators through various bodies including Centre for Effective Dispute Resolution in London, Conflict Dynamics South Africa, and Tekiso South Africa, and various legal firms have dedicated mediation departments.
Judicial support	Judges have come out more and more in support of mediation, and often encourage litigants to mediate to resolve their issues. In some cases, the failure by legal representatives to mediate at an early stage has resulted in adverse costs orders being made against an intransigent litigant, if it is found that it was unreasonable to refuse to mediate. Normally mediation results in the stay of proceedings but it is important for the parties to agree to any periods for prescription of claims and disputes to be waived and extended.
Effectiveness and enforceability of contractual provisions	More contracts provide for mediation to resolve disputes. In South Africa the concept of "Ubuntu" – that is, humanity towards others – has become a norm which emanates from our Constitution. The parties are expected not only to negotiate in good faith in contracts but also in the mediation process. Once an agreement of settlement flowing from a mediation is achieved, this is enforceable in South African courts.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation has developed as an acceptable and cost-effective process to determine disputes. It is a subject now lectured on at University. Mediation has become popular and the benefits of mediation are being realised by businesses and members of the public. The speed and cost savings of the process are major benefits.

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South Korea

Mediation culture	Mediation in South Korea has a long history and takes place on a voluntarily as well as, in the context of certain Korean court proceedings, a mandatory basis. The mandatory form of mediation is known as "court-annexed mediation" whereby the court refers the parties to mediation in an effort to resolve the dispute at an early stage. Historically, court-annexed mediation was only imposed on, and was automatic in respect of, family and property disputes. However, since the enactment of the Civil Mediation Act 1990 ("**CMA**"), all types of civil disputes can, if ordered by the court or by the request of the parties be subject to court-annexed mediation. Nonetheless, whilst mediation is a commonly used form of ADR in the context of domestic litigation or domestic arbitration, it is currently relatively rarely agreed to or initiated by Korean parties in international litigation or international arbitration.
Legal and regulatory framework	The most important piece of legislation is the CMA which provides for court-annexed mediation. The CMA is also supplemented by the Civil Mediation Regulations ("**CMR**"), which provide additional guidelines. Under the CMA, the Korean courts have the power to refer a domestic litigation to mandatory mediation at any point until the judgement of the appellate trial is issued. More recently there has been a growth of independent specialised mediation agencies in various areas such as medical, commercial, labour, construction disputes etc. which are governed by separate regulations. Finally, the Korean Commercial Arbitration Board (KCAB) also provides mediation services if requested by the parties. This is, as with most similar institutions and services, entirely voluntary and consensual.
Infrastructure	In relation to court-annexed mediation, this is normally conducted at the court or an appropriate alternative according to the circumstances of the case. For KCAB (i.e. consensual) mediations, these often take place at the KCAB's offices in Gangnam, Seoul or the Seoul IDRC's offices in Jongno, Seoul. However, it can also take place at the appointed mediator's offices or another venue agreed between the parties.
Judicial support	Alongside the CMA and the associated legislative framework for mediation in Korea, there is also strong judicial support for mediation. It is common for the courts to refer disputes to mediation at an early stage to encourage settlement. Typically a separate mediation judge will act as the primary mediator. He/she may form a mediation committee with two other mediators. However, if a court refers a case midtrial to mediation, the judge adjudicating the original proceedings may and typically will conduct the mediation him/herself. Where an ongoing trial is referring to mediation, stays are granted for the trial procedure which resumes once the mediation has been concluded.
Effectiveness and enforceability of contractual provisions	Obligations on parties to mediate as a condition precedent to litigation (or arbitration) are often seen in construction contracts as well as certain other types of commercial contracts. This reflects the increasing use of such clauses in international contracts generally and a growing effort to avoid formalising disputes through staged dispute resolution clauses. Such clauses are generally not viewed as enforceable although, as is being seen in common law forums such as England & Wales, this position is evolving with more specific contractual provisions being more likely to be considered effective.
How is mediation likely to develop in this jurisdiction in the medium term?	For domestic disputes, litigation remains the pre-eminent form of dispute resolution; however, especially when coupled with the ongoing professionalization of mediation in Korea and its successful resolution of disputes, the use of mediation has been steadily increasing in use. In relation to international disputes, Korean entities are currently reluctant to engage in or initiate ADR methods such as mediation. This is due to a combination of unfamiliarity with "international" – style ADR procedures, language barriers and differences in corporate structure between Korean companies and international ones. However, due to the focus on avoiding unnecessary legal costs and damaging commercial relationships, this is likely to evolve with Korean companies being more prepared to engage in mediation or equivalent forms of ADR.

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Spain

Mediation culture	Mediation in Spain is at an early stage of development. Mediation clauses have started appearing more regularly in the last few years, mainly in commercial agreements having a connection with the United States or the UK. As there was, until recently, no legal framework for commercial mediation, in practice such clauses simply required formal exchange 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: (i) Law 5/2012, of July 6, on mediation in Civil and Commercial matters (the "**Mediation Act**"). The Mediation Act was preceded by a 'Royal Decree-law' which was approved on 7 March 2012, and which implemented the requirements of Directive 2008/52/EC; and (ii) Royal Decree 980/2013, of 13 December, which implemented certain aspects of the Mediation Act. There are three main points to note about the Mediation Act: (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 certain other recommendations from UNCITRAL. Royal Decree 980/2013, in contrast, is focused on the particulars of the training, register and insurance requirements for mediators.
Infrastructure	Mediation has not traditionally been a part of 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. Spanish regulation on mediation includes a regulatory framework for mediators and institutions providing mediation services; that framework still requires some further development in practice.
Judicial support	The Court may invite parties to use mediation as a way of resolving their dispute although this is unusual in practice. Nevertheless, such an invitation will not usually imply 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 latter, which will be granted by the Court subject to the limits set in Spanish Civil Procedural Law.
Effectiveness and enforceability of contractual provisions	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.
How is mediation likely to develop in this jurisdiction in the medium term?	Since the entry into force of the Mediation Act a variety of initiatives have been put forward, both public and private, with a view to promoting its development, although to date they have not had a noticeable impact, except from an informational perspective. The limited official data (covering the first year and a half since the Mediation Act came into force) shows that: ■ invitations from the courts for parties to attend a mediation increased by 26% between 2012 and 2013; and that ■ the number of courts issuing such invitations doubled. The same data shows that the culture of mediation is still at a very early stage of development, as the court's invitation to mediation was only accepted by the parties in 19% of the cases. In view of this data it is foreseeable that mediation will continue to develop in Spain. However, such development is likely to be relatively slow.

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Sweden

Mediation culture	Mediation is a well-established concept in Sweden. In practice, however, mediation is seldom used in commercial disputes (except where mediation is mandatory such as in certain labour, landlord/tenant and copyright disputes). An explanation for the limited use of mediation as a dispute resolution mechanism in Sweden could be that Swedes are normally less adversarial and more inclined to find good-faith solutions to their disputes. If a settlement cannot be reached between the parties themselves (usually assisted by counsel), Swedish parties tend to assume that mediation will not help to resolve the dispute.
Legal and regulatory framework	In commercial litigation, parties are free to settle a dispute by any means they see fit. Accordingly, parties are free to agree on mediation as the primary dispute resolution mechanism for a future dispute. Parties are also free to agree to mediate a dispute which has already materialized. The European Mediation Directive has been incorporated into Swedish statutory law. Under this law, the settlement of disputes that have been referred to mediation after the dispute has arisen may be declared enforceable by the Courts, subject to the parties' consent. In addition, the Swedish Code of Judicial Procedure encourages parties to reach amicable settlements.
Infrastructure	To support mediation in Sweden, the Stockholm Chamber of Commerce ("**SCC**") had until the end of 2013 a Mediation Institute which trained and certified mediators. The Arbitration Institute of SCC has now assumed most of the Mediation Institute's functions, including serving as the appointing authority of mediators. One function the Arbitration Institute has not yet assumed thus far is the provision of training or accreditation for mediators. Should parties wish to agree to mediation at any point, the Arbitration Institute does provide model clauses on its website for parties to include when concluding their contracts. Suitable venues for mediations can be more easily found in Sweden's larger cities.
Judicial support	Pursuant to the Swedish Code of Judicial Procedure, Swedish courts are obligated to encourage settlement between the parties before a dispute is decided by the court. The court will often spend considerable effort assisting the parties to reach a settlement at a preparatory stage of the court proceedings. With the parties' consent, Swedish courts may also appoint a mediator to help the parties reach a settlement. However, no sanctions can be imposed should a party refuse to participate in settlement discussions or mediation.
Effectiveness and enforceability of contractual provisions	Under Swedish law, mediation agreements are neither binding nor enforceable. Therefore, should any party choose to disregard such an agreement to mediate and proceed directly to litigation, the courts will not enforce the mediation clause and send the parties to mediation. Moreover, there will be no sanctions imposed against a party who has breached the mediation agreement. If the mediation clause is part of an arbitration agreement, such mediation clause may be enforced subject to the arbitral tribunal's discretion. The general view is that the enforcement of a mediation clause requires it to be clear and precise and to impose mandatory mediation.
How is mediation likely to develop in this jurisdiction in the medium term?	Even though mediation is a well-known concept in Sweden, the number of cases using mediation as a dispute resolution mechanism has not increased over the last couple of years. Due to the overall increase in complexity, time and costs for parties to either litigate and arbitrate, it is likely that the use of mediation will increase in the future.

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Switzerland

Mediation culture	Switzerland has a strong tradition of conciliation and mediation. Mandatory conciliation, in particular, is an inherent part of the judicial system. Historically, voluntary mediation was mostly used in family and employment disputes, but it has in recent years also gained popularity as an ADR method in commercial matters.
Legal and regulatory framework	The Swiss Code of Civil Procedure ("**SCCP**"), which entered into force on 1 January 2011, distinguishes between: ■ "conciliation", which refers to a (generally) mandatory preliminary phase in civil court proceedings conducted before a state-appointed conciliation authority; and ■ "mediation", i.e. a voluntary, confidential process before a neutral facilitator appointed by the parties, which can occur before, in parallel to or irrespective of any court or arbitration proceedings. The SCCP regulates the interaction between mediation, conciliation and civil court proceedings. The parties may, for example, choose mediation instead of conciliation in the preliminary phase of civil court proceedings or may, at any later stage, request the suspension of court proceedings to pursue mediation. While the conciliation process is set out in detail in the SCCP and cannot be changed by the parties, there are no provisions governing the conduct of mediation. Rather, in mediation, the parties have the freedom to agree on the procedure to be followed.
Infrastructure	There are a number of national and regional institutions, associations and organisations in Switzerland that offer mediation services or keep lists of experienced mediators, such as, for example the Swiss Chamber of Commercial Mediation, the Swiss Chamber's Arbitration Institution and the Swiss Bar Association. There is no mandatory accreditation process in order to use the title of "mediator". Certificates or titles may be obtained by completing training programmes offered by established national and regional organisations or associations.
Judicial support	Parties are in principle required to take part in conciliation prior to civil court proceedings. If the claimant fails to appear at the conciliation session, the claim will be deemed withdrawn, whereas if the respondent fails to appear, the claimant will be given leave to proceed with the claim. A court seised with a dispute may, at any point of the civil court proceedings, encourage the parties to reach an amicable settlement and act as a conciliator to that end. The court may also recommend that the parties engage in mediation and the parties themselves may at any time request a suspension of the civil court proceedings in order to pursue mediation.
Effectiveness and enforceability of contractual provisions	In order to be enforceable, an agreement to mediate contained in a multi-tiered dispute resolution clause must be sufficiently clear and specific. A generic agreement to 'seek to find an amicable solution' would not be considered enforceable. Parties may obtain court approval of a settlement agreement, which will then have the effect of a binding court decision. This option is only available where civil court proceedings are already pending in relation to the dispute.
How is mediation likely to develop in this jurisdiction in the medium term?	The inclusion of specific provisions on mediation in the SCCP has further raised awareness for this form of ADR. It is likely that parties will increasingly resort to mediation, especially in commercial disputes where parties are seeking to resolve disputes in a cost-effective manner.

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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 entered into force in June 2013. A Regulation in relation to the Mediation Law entered into force in January 2013 providing further details about the implementation of certain provisions of the Mediation Law. Mediators' fees are regulated under a separate tariff published yearly by the Ministry of Justice. The Mediators Council (incorporated pursuant to the Mediation Law) also introduced a set of model ethics and practice rules for mediators in March 2013. Under the Mediation Law, only private law disputes (except disputes involving domestic violence claims) may be resolved by mediation. The parties are free to decide on the mediation procedure used, provided that they act in accordance with Turkish law.
Infrastructure	Since mediation is not common in Turkey, mediators are not widely available. Pursuant to the Mediation Law, mediators are registered and the parties choose their mediator from a list of registered mediators. Unless otherwise agreed, the mediator's fee and expenses are shared between the parties. However, the Mediation Law does not make any reference to particular mediation venues.
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.
Effectiveness and enforceability of contractual provisions	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.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is a fairly recent development in Turkey, and parties are generally not familiar with the associated procedures, reliability and enforceability of the resulting settlement. Although a growing number of mediators are choosing to officially register as practitioners, mediation has not yet achieved mainstream acceptance as a dispute resolution mechanism in Turkey.

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Ukraine

Mediation culture	Mediation is not a very common dispute settlement method in Ukraine. Several bills concerning mediation have been introduced but none have been passed by the Ukrainian Parliament. As a result, courts cannot order compulsory mediation. One party cannot force the other to agree to or to be bound by mediation. If applied, it is most often used for settlement of civil (largely family) matters, disputes with victims of petty crime and traffic offences.
Legal and regulatory framework	Currently, mediation is not regulated under Ukrainian law. Any settlement agreed following mediation needs to be documented as merely an agreed variation of the contractual terms between the parties or amicable settlement of the ongoing litigation. The Code of Civil Procedure and the Code of Commercial Procedure allow litigants to settle their disputes amicably pending the ongoing litigation. In the same vein, the Code of Criminal Procedure provides for discontinuation of a criminal probe in case of conciliation between the suspect and the victim. Such settlement or conciliation will be subject to limited court review and endorsement. However, those Codes do not provide procedure or guidelines on how parties should reach amicable settlement or conciliation. Parties may choose mediation, negotiation or any other method to reach settlement as they see fit.
Infrastructure	There are no national mediator standards/practice standards. However, there are a number of private or NGO-based mediation centres that provide professional mediators trainings, certification and try to set uniform standards in the industry.
Judicial support	A court may advise parties to refer to a mediator, e.g. in a divorce case. Several courts take part in pilot mediation projects sponsored by the EU and the US but the number of such courts is limited.
Effectiveness and enforceability of contractual provisions	Mediation clauses do not restrict the right of the parties to refer to the court, nor do they supersede the jurisdiction of the court. It should be noted that any agreement reached by mediation may only be enforced if it is subsequently endorsed by the court. Amicable settlement agreements, if endorsed by the courts, have the force of a court judgment.
How is mediation likely to develop in this jurisdiction in the medium term?	A new piece of legislation on mediation is likely to be adopted based on (and consolidating) two bills which have been recently proposed. The new piece of legislation, if adopted, is expected to lead to an increase in the numbers of commercial mediations taking place in Ukraine. However, it is still unclear if such piece of legislation will be adopted this year.

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UAE

Mediation culture	In the UAE, formal 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. In 2013, the Abu Dhabi Global Market (the "**ADGM**") was set up as an international financial centre for local, regional and international institutions. The ADGM Courts have yet to issue their procedural rules but these are expected to include provisions encouraging parties to consider the use of mediation and conciliation as alternative means of resolving disputes.
Infrastructure	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. 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 ("**DIFC-LCIA**") Arbitration Centre, recently restructured in November 2015, offers mediation as well as arbitration services to users of the Arbitration Centre under the DIFC-LCIA Mediation Rules.
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 will 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 provisions	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 settlement 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.
How is mediation likely to develop in this jurisdiction in the medium term?	In traditional Middle Eastern culture, mediation conducted by respected elders has been the preferred method of dispute resolution. The challenge for the UAE now is to facilitate and encourage the transition from these informal forms of mediation to institution-led mediations, but good progress is being made in terms of raising awareness of the benefits of mediation.

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USA

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 provisions	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 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).
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation likely will continue to become more widely used over the medium term. Alternative dispute resolution mechanisms generally are gaining more attention and acceptance, both among practitioners and academics. The growth of fora promoting mediation as an effective dispute resolution mechanism will also likely contribute to this trend.

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