

# INTERNATIONAL COMMERCIAL MEDIATION

Law and Regulation in  
Comparative Context



RONÁN FEEHILY

# International Commercial Mediation

**Catharine Titi, Katia Fach Gómez**



## **International Commercial Mediation:**

*International Commercial Mediation* Ronán Feehily, 2022-09-08 In this comprehensive comparative study Ronán Feehily analyses the legal and regulatory issues surrounding international commercial mediation and discusses their implications in a range of settings While existing literature tends to cover mediation in general Feehily places the commercial mediation process in its legal and regulatory context offering an original contribution to the field The book identifies the controversies that arise from the mediation process across numerous jurisdictions and discusses them in detail Comparing the mediation process in Europe North America and Australia as well as other common civil and mixed jurisdictions Feehily demonstrates where systemic differences are transcended and where they are significant Organised systematically and written in an accessible style Feehily offers an international holistic guide to the commercial mediation process     ***Mediation in International Commercial and Investment Disputes*** Catharine Titi, Katia Fach Gómez, 2019 Until now the resolution of international commercial and investment disputes has been dominated almost exclusively by international arbitration But international mediation and conciliation are now coming to the fore This book brings together a line up of highly qualified experts to address this topical complex subject from a variety of angles     **International Commercial Mediation** Cyril Chern, 2020-11-25 International Commercial Mediation is a practical guidebook that explains how to handle and complete a mediation as well as how to personally market the skills developed as a mediator The book provides examples supplies forms and explains procedures of actual working mediations which can be used to adapt to individual needs It also deals with advanced practitioner issues and the emerging law on international mediation     **International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions** Peter Binder, 2019-05-14 International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions Fourth Edition Dr Peter Binder This new edition of a classic text is so extensively revised and updated as to constitute a new book It does however retain the tried and tested article by article structure of the previous three editions it covers all the information needed when contemplating cross border arbitration or mediation and enables a practitioner to ascertain what to expect in each jurisdiction It remains the only book that provides a complete overview of all the adopting jurisdictions now 111 at one glance with a description of the legislation in these jurisdictions counterbalanced by court rulings to demonstrate how matters are dealt with in everyday practice The popular adoption chart matrix unique to this book has been further enhanced and updated Featuring the first full commentary on the newly released 2018 UNCITRAL Model Law on International Commercial Mediation including its revolutionary regime for the enforcement of settlement agreements reached by means of mediation and an update of all case law on UNCITRAL texts CLOUT to date the fourth edition provides explicit expert guidance on such matters as the following overview of each jurisdiction that has enacted the Model Laws provisions in a particular national Model Law enactment to be watched out for how a particular issue dealt with in a Model Law enacting jurisdiction has been handled by local courts and which

jurisdictions can be safely recommended in arbitration or mediation clauses in international commercial agreements Both of the Model Laws are reproduced in full in an appendix With an examination of each provision s legislative history as well as national and subnational adoptions of the Model Laws this work provides a complete picture of global practice in international arbitration and mediation as it exists today taking full account of emerging trends in the enactment process and in case law Business people who agree to arbitrate in one of the 111 recognized Model Law jurisdictions can rely on a secure minimum of rights in the arbitral proceedings and run less risk of being surprised by unwelcome peculiarities of local law International litigation lawyers arbitrators and in house lawyers who are considering arbitrating or mediating in one of the 111 jurisdictions analysed academics in international ADR and national government officials dealing with cross border trade will benefit enormously from this new edition

**Current Issues in International Commercial Mediation** Veronika Vanisova, 2019 This paper deals with the present debate in the context of the current mediation scene within the scope of international commerce Recently we have witnessed a number of initiatives aimed at improving and increasing the use of mediation Various prominent organizations traditionally providing the background for international arbitration adopted mediation rules reflecting the growing demand for mediation services In EU the Directive on certain aspects of mediation in civil and commercial matters was adopted and various subsequent steps to increase the use of cross border mediation were taken International commercial disputes often tend to be high value cases with a considerable level of complexity and therefore more time and cost consuming compared with domestic commercial disputes Despite the fact that arbitration remains indisputably the most preferred mean of international commercial dispute resolution it also faces a strong criticism It s said that international commercial arbitration became too costly slow and too formalized Parties to the complex commercial disputes therefore look for new dispute resolution mechanisms that would be easier faster and less expensive It would seem that nothing prevents mediation from taking the place of the most popular method of resolving international commercial disputes and therefore becoming a successor of arbitration However serious doubts exist whether mediation can serve as an adequate substitute for arbitration in particular within the scope of international commerce One of the most common complaints is that mediation lacks the international legislative framework such as international arbitration may benefit from This view is based on the claim that parties to the cross border commercial conflicts would find mediation more appealing if the settlements resulting from mediation were subject to legal regime providing for direct enforceability This paper further discusses this issue with particular focus on the nature of agreement resulting from mediation in the light of the proposal of the new international legal instrument prepared by UNCITRAL Working Group II i e the Singapore Convention It is argued that by granting the settlement agreements that fall within the scope of this new legal instrument a specific legal status behavioral pattern of the parties involved in the international commercial disputes may change dramatically

*Beyond International Commercial Arbitration? The Promise of International Commercial Mediation* S.I.

Strong,2014 Although international commercial arbitration has long been the preferred means of resolving cross border business disputes the international corporate community has become increasingly concerned about increasing costs delays and procedural formalities As a result parties are looking for other means of resolving cross border business disputes One of the more popular alternatives is mediation Advocates of mediation extol its many benefits including its ability to resolve disputes more quickly and with fewer costs and formalities than other alternatives However very little research exists on how mediation operates in the international commercial context This Essay therefore considers whether and to what extent international commercial mediation can be said to be superior to international commercial arbitration That question is answered in a three step analysis First this Essay outlines the unique characteristics of international commercial disputes to determine whether such matters are amenable to mediation The discussion then considers what might motivate parties to use international commercial mediation if savings of time cost and procedural formality are taken out of the equation Finally the Essay describes how public international law might be used to improve certain deficiencies in international commercial mediation In so doing the discussion aims to help parties conduct a realistic evaluation of the prospects of international commercial mediation and find a way to ensure the procedure s long term success

*International Commercial Mediation Training Role -plays* Greg Bond,2015 *Combining Mediation and Arbitration in International Commercial Dispute Resolution* Dilyara Nigmatullina,2018-06-28 Securing fast inexpensive and enforceable redress is vital for the development of international commerce In a changing international commercial dispute resolution landscape the combined use of mediation and arbitration has emerged as a dispute resolution approach which offers these benefits However to date there has been little agreement on several aspects of the combined use of processes which the literature often explains by reference to the practitioner s legal culture and there is debate as to how appropriate it is for the same neutral to conduct both mediation and arbitration Identifying the main ways of addressing concerns associated with the same neutral conducting both mediation and arbitration same neutral arb med arb this book examines how effectively these methods achieve the goal of fast inexpensive and enforceable dispute resolution evaluating to what extent the perception and use of the same neutral arb med arb depends on the practitioner s legal culture arguing that this is not a one size fits all process Presenting an empirical study of the combined use of mediation and arbitration in international commercial dispute resolution this book synthesises existing ways of addressing concerns associated with the same neutral arb med arb to provide recommendations on how to enhance the use of combinations in the future

**Mediation and Commercial Contract Law** Maryam Salehijam,2020-12-10 There is an urgent need to better understand the legal issues pertaining to alternative dispute resolution ADR particularly in relation to mediation clauses Despite the promotion of mediation by dispute resolution providers policy makers and judges use of mediation remains low In particular problems arise when parties lack certainty regarding the legal effect of a mediation clause and the potential uncertainty regarding the binding nature of agreements to

pursue mediation is problematic and threatens the growth of ADR This book closely examines the importance and complexity of mediation clauses in commercial contracts to remedy this persistent uncertainty Using comparative law methods and detailed empirical research it explores the creation of a comprehensive framework for the mediation clause Providing valuable insight into the process of ADR and mediation this book will be of interest to academics law makers law students in house council lawyers as well as parties interesting in drafting enforceable mediation clauses

**Applying the Lessons of International Commercial Arbitration to International Commercial Mediation** S.I. Strong, 2018 Traditional analyses of international commercial mediation focus primarily on either the step by step process associated with resolution of particular disputes or the relative merits of mediation over alternatives such as transnational litigation or international commercial arbitration However there is a significant shortage of comprehensive scholarly examinations of the international mediation regime as a whole such as those that are recommended by experts in dispute system design DSD DSD is a unique area of study since it does not seek to promote or analyze a particular methodology or process but instead focuses on larger structural issues so as to improve dispute resolution at a systemic level Only by adopting this type of larger analytical framework can parties policymakers and scholars truly appreciate the forces influencing decisions relating to the resolution of cross border business disputes Although a full DSD analysis would be beyond the scope of the current discussion this chapter considers a number of critical design issues relating to international commercial mediation building off a recent large scale empirical study conducted by the author in this area of law Among other things the chapter applies a default theoretic analysis to the field of international dispute resolution to consider how various visible and invisible nudges affect individual and institutional decisions regarding international commercial mediation In so doing the discussion not only provides an innovative structural perspective on the interplay between litigation arbitration and mediation in the international commercial context but also suggests how the existing system might be redesigned to create a more effective means of resolving cross border business conflicts

*Multi-Tier Approaches to the Resolution of International Disputes* Anselmo Reyes, Weixia Gu, 2021-12-16 Provides a comprehensive global survey on multi tier dispute resolution examining its trends its strengths and weaknesses and the way forward

**International Commercial Dispute Resolution** Jonathan Warne, 2009 The world of dispute resolution made clear International Commercial Dispute Resolution is a new title that reflects the way in which the litigation arena has changed over recent years Cross border business relationships and the present economic climate have markedly increased the potential for commercial disputes to arise between parties in different jurisdictions and clients are increasingly looking for the most time and cost effective way of resolving disputes Expert advice from leading practitioners in 24 jurisdictions With contributions from leading practitioners this practical book looks at dispute resolution in 24 jurisdictions that represent the world s major international trade centres and developing legal systems User friendly and practical structure Each chapter is devoted to a different jurisdiction and follows the same

structure It provides a practical summary of the relevant legal systems and offers an insight into the manner in which each jurisdiction seeks to resolve commercial disputes both through traditional court proceedings and alternative dispute resolution techniques Written by leading local practitioners each chapter opens with a round up of the key issues that you will need to consider when dealing with this country and includes flowcharts summarising the procedural stages of litigation This book is an essential addition to the bookshelf of every international litigator 5 key reasons why you need this book Covers 24 key jurisdictions throughout the world Provides an authoritative overview from leading local practitioners Includes flow charts summarising the procedural stages of litigation Highlights the key issues that must be considered when dealing with each jurisdiction Covers traditional court proceedings and alternative dispute resolution techniques 24 jurisdictions covered Australia Bermuda Brazil Canada Cayman Islands China Czech Republic England France Germany Guernsey Hong Kong India Japan Je

**EU Cross-Border Commercial Mediation** Anna Howard, 2021-01-13 Despite the growing national and international regulatory framework to support cross border mediation the use of such mediation appears to remain stubbornly low This book focuses in particular on the European Union s EU s continued efforts to encourage the use of cross border mediation and examines why such efforts have had a limited impact It does so by drawing on rare and at times surprising detailed insights from in house counsel of multinational companies regarding their use of EU cross border commercial mediation By viewing mediation through the lens of disputants new and important findings regarding why disputants do and do not use cross border mediation have emerged While these findings are of primary relevance to EU policy and practice they have implications far beyond the EU context at a time of increasing international interest in cross border mediation The analysis of the insights provided by the disputants reveals for example the prominent role played by negotiation as a cross border dispute resolution process that negotiation is a key comparator for disputants when considering whether to use mediation how the EU s continued focus on understanding and presenting mediation as an alternative to litigation has resulted in measures which are insufficient to address fully the barriers to the use of mediation intriguing barriers to the use of mediation which arise from the association which disputants draw between mediation and negotiation how the relationship which disputants draw between mediation and negotiation paradoxically raises both opportunities for and obstacles to the increased use of mediation and what disputants need in order to increase their use of cross border mediation The qualitative nature by way of interviews of the research conducted for this book has enabled the identification of nuanced and novel findings regarding mediation s position and potential in cross border dispute resolution These findings together with a detailed examination of the EU Directive on Certain Aspects of Mediation in Civil and Commercial Matters and the EU s continued initiatives to foster the use of mediation form the foundation upon which this book s recommendations are built Changing the frame to view the use of mediation through the disputants perspective as this book does provides the opportunity for the EU to promote cross border mediation in a way which resonates more deeply with

disputants and responds more fully to their concerns and needs This thought provoking book will be of interest not only to European and national bodies seeking to promote the use of mediation but clearly also to dispute resolution academics in house counsel and of course mediators and dispute resolution practitioners in general **Ultima Thule** Lucy Reed,2019 In this paper I will first consider the reasons for the low rates of successful international commercial mediations and then begin to explore what it might take to encourage the international legal and business communities to embrace mediation for international commercial disputes Lastly I will introduce and examine the new United Nations Convention on International Settlement Agreements Resulting from Mediation The Singapore Convention on Mediation in particular its role in promoting the use of international commercial mediation globally This paper was presented as the keynote address at the inaugural Schiefelbein Global Dispute Resolution Conference on 18 January 2019 at the Sandra Day O Connor School of Law of Arizona State University UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use ,2022 *Uniform [International] Commercial Mediation Act [consultation Document].* ,2005 **Civil and Commercial Mediation in Europe (set - Vols. 1&2)** Carlos Esplugues Mota,José Luis Iglesias Buhigues,José Luis Iglesias,Guillermo Palao Moreno,2014-03-27 Originally available as two separate volumes Intersentia s Civil and Commercial Mediation in Europe is now available as a two volume set About Volume I on National Mediation Rules and Procedures Mediation is becoming an increasingly important tool for resolving civil and commercial disputes Although it has been long since recognized in many legal systems in recent years it has received an important boost and is currently one of the most topical issues in the field of dispute resolution The European Directive 2008 52 EC of the European Parliament and of the Council of 21 5 2008 on certain aspects of mediation in civil and commercial matters prescribes a set of minimum common rules on mediation for all EU Member States with the exception of Denmark This book examines the current legal framework in every EU Member State regarding mediation in civil and commercial matters as well as the way in which the Directive has been or is expected to be implemented in the near future It is written by renowned specialists on mediation in Europe and provides an exhaustive account for both scholars and practitioners in Europe and beyond the continent Every chapter on national law analyzes both out of court and court annexed mediation in the existing legal framework the areas of law covered by mediation the value and formal requirements of the agreement to submit any dispute to mediation personal features and requirements for mediators procedural requirements in the mediation procedure the relationship between the mediator and public authorities the outcome of the mediation procedure in the scenario in which a mediation settlement is reached its requirements and effects About Volume II on Cross Border Mediation Mediation plays a leading role within the movement of Alternative Dispute Resolution after centuries in which for several reasons the State and State courts were regarded as the only available instrument to ensure access to justice to citizens In the European Union the institution of mediation has received much support in the form of Directive 2008 52 EC which sets



forth a minimum common legal framework for mediation in the Member States The 2008 Directive has finally been implemented in the Member States and this book provides the much needed in depth analysis of the status of the mediation regimes in the European Union The analysis covers the legal regimes of the Member States set up for cross border and national mediation This volume includes national reports on cross border mediation including in depth information on all the relevant aspects of cross border mediation the notion of cross border mediation the law applicable to the mediation clause the mediation proceedings and the content of the settlement reached by the parties Special attention is of course given to the recognition and enforcement in the European Union of settlements reached in other Member States and outside Europe In addition the role of mediators and requirements to become a mediator are examined This book provides a unique picture of the legal situation in the European Union for cross border mediation It is an invaluable instrument for those who want to know more about this complex topic or want to become a mediator in Europe themselves **Commercial Mediation**

**Practice Guide** Bennett G. Picker,Conna A. Weiner,2023-11-07 This book is intended to serve as a practical guide to assist both lawyers and non lawyer business executives in effectively navigating and succeeding in the landscape of commercial mediation This third edition of the Commercial Mediation Practice Guide continues to offer the reader a user friendly guide to the process of mediation and offers checklists wherever possible The Singapore Convention on Mediation Guillermo Palao,2022-12-13 This Commentary offers an article by article examination of the United Nations Convention on International Settlement Agreements Resulting from Mediation the Singapore Convention as well as insights into the negotiation process through which the Convention was developed It provides deep theoretical and practical analysis of the Convention and its consequences for the promotion of mediation as a mechanism to solve commercial conflicts with a cross border character

International Mediation : a Better Alternative for the Resolution of Commercial Disputes Julie Barker,1996

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