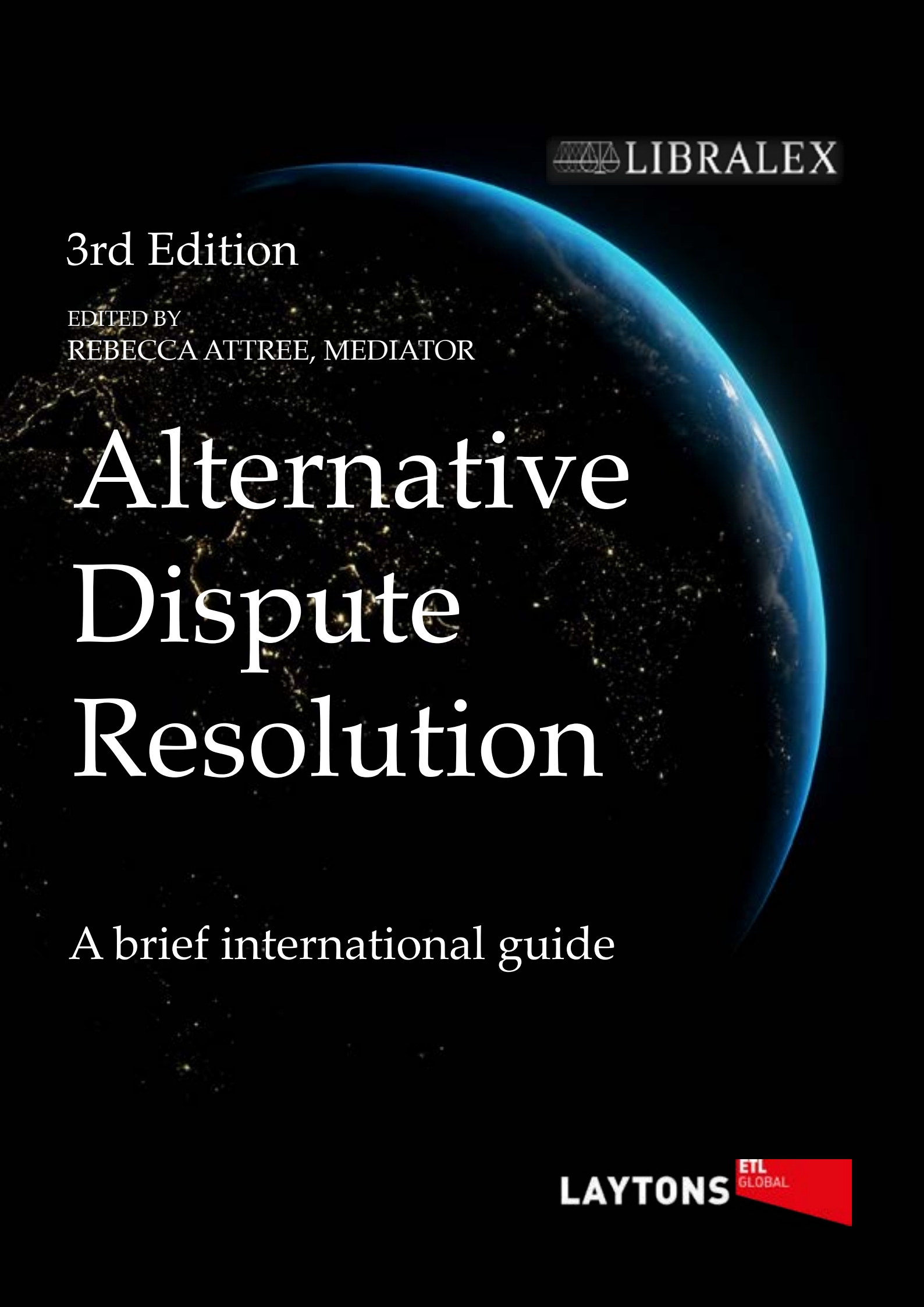

LIBRALEX

3rd Edition

EDITED BY
REBECCA ATTREE, MEDIATOR

Alternative Dispute Resolution

A brief international guide

LAYTONS ETL GLOBAL

Contents

INTRODUCTION

Rebecca Attree, Mediator, Attree & Co, Chair of the Dispute Resolution Group, Honorary Member, Libralex EEIG

I am delighted to present the 3rd edition of this Guide. Since its inception in 2015 there has been an increase in the use of Alternative Dispute Resolution in many jurisdictions. Mediation has become more popular – indeed in England and Wales it is now considered so mainstream as to no longer be called “alternative” - simply another form of dispute resolution. The advent of judicial mediation in some jurisdictions is also noteworthy.

The idea for this Guide was borne out of many fascinating discussions about comparative law and procedure within the Dispute Resolution Working Group of Libralex EEIG, International Network of lawyers. I am very grateful to each of the contributors for their chapter, collaboration and friendship. We all have much to learn from each other and the different practices and customs around the globe can inspire thinking as to how disputes can best be resolved in the future. As a mediator of international disputes, I hope this Guide and my professional practice will play a small part in achieving “peace through world trade” (motto of the Worshipful Company of World Traders”). As has been said (loosely translated) “beyond ideas of right and wrong there is a field. I will meet you there”. I hope this Guide will inspire more meetings in “fields” around the world.

The position stated as at 1 April 2023. Specific cases need specific advice.

EUROPEAN UNION

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The EU Mediation Directive 2008/52/EC

Mediation in the European Union has become increasingly regarded as a reliable method of resolving disputes. This is in part due to the adoption of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters ('the Directive'). It applies throughout the EU except for Denmark, that has opted out.

Cross Border Recognition and Enforcement

One of the main aims of the Directive is that mediated settlement agreements are recognised and enforced in one Member State if made in another Member State as if they were court judgments. This enhances the efficacy of cross border mediation within the EU. It provides that mediation settlements are enforceable by a 'mediation settlement enforcement order'.
Article 6 of the Directive requires the 'explicit consent' of all parties for enforceability to be recognised by a court. Some countries require, for example, notarial execution of a settlement agreement. Otherwise, the practical way to deal with this in cross border settlement agreements is for an enforceability clause to be drafted in the mediation settlement agreement.
Generally, the question of legal and other costs is resolved at a mediation if the liability and quantum issues are settled. The costs element of the mediation settlement agreement would then be recognised and enforced in the same way as the substantive settlement. If the costs issues remain unresolved, that part of the dispute would be referred to the court where the proceedings were being heard and costs would be assessed in accordance with the rules of the jurisdiction seised.

Limitation Period

A further step in favour of mediation is Article 8 of the Directive, which provides that Member States shall ensure that the limitation or prescription period for any litigation or arbitration shall be extended during the period of the mediation process.

Quality of Mediation

The Directive requires Member States to provide systems for quality control of mediation services, judicial powers to invite parties to mediate, confidentiality of mediations and encourage Codes of Conduct and training of mediators.

Confidentiality

Article 7 of the Directive provides that confidentiality of the mediation process will be preserved, unless (i) there are overriding policy considerations; or (ii) where disclosure of a mediation settlement agreement is necessary to enforce that agreement; or (iii) the parties agree.

Conclusion

The implementation of the Directive in the EU has put mediation at the forefront of ADR and gives a clear message that it is an effective and highly satisfactory method of resolving many types of disputes.

GLOBAL

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The Singapore Convention on Mediation 2019

The UN Convention on International Settlement Agreements
Resulting from Mediation (known as the Singapore Convention on Mediation) opened for signature on 7 August 2019. The aim of the Convention is to formulate and implement an international framework for the enforcement of mediated settlements.

46 States signed the Singapore Mediation Convention in August 2019, including the US, Singapore, China, India, Malaysia, the Philippines and South Korea. As of 1 April 2023, it has 55 signatories and 10 countries where it has been fully incorporated into the local law. (Singapore, Fiji, Qatar, Saudi Arabia, Ecuador, Georgia, Honduras, Kazakhstan, Turkiye and Belarus). The UK has announced its intention to sign the Convention. The European Union has not yet signed the Convention. It seems that this is because tit has not yet been agreed whether individual countries or the European Union will sign.

The Convention provides a process for the direct enforcement of cross-border settlement agreements between parties resulting from mediation. It provides that a settlement agreement may be enforced directly by the courts of a State. This allows the party seeking enforcement to apply directly to the courts of the State where the assets are located. The relevant authority may refuse to enforce the settlement agreement in limited circumstances.

The Convention will only apply where the settlement agreement:

- is in writing;
- results from a mediation;
- is an agreement between two or more parties who have their place of business in different States; or
- the place of business of the parties to the agreement is different from either:

i. the State in which a substantial part of the obligations of the settlement agreement is performed; or
ii. the State with which the subject matter of the settlement agreement is most closely connected.

It follows that where two parties based in a non-signatory country such as the UK mediate, and if the place where the settlement agreement is to be performed or the place where the subject matter of the settlement agreement is most closely connected is in a State that has signed the Convention, then the Convention would apply.

The Convention does not apply to settlement agreements:

- relating to consumer transactions nor to family, inheritance or employment law;
- that have been approved by a court or concluded in the course of proceedings before a court and that are enforceable as a judgement in the State of that court; or
- that have been recorded and are enforceable as an arbitral award.

The success of the Convention will largely depend on the extent to which it is accepted and ratified by States. However, it does in any case serve to raise the profile of mediation as an alternative dispute resolution for cross-border disputes.

Tips for those attending a mediation to which the Convention may apply:

• The mediator should sign the settlement agreement or a separate document to confirm that the settlement was reached through mediation.

• If a settlement is reached shortly after the main mediation session, consider reciting in the agreement it was entered into following a mediation.
This is because under the Convention the enforcing court must be satisfied the settlement agreement arose from a mediation.

• Take particular care to draft the settlement agreement so it will be easily understood by any overseas court. Make sure statutory references are made in full, for example. Spell out in detail the meaning of any legal concepts particular to the applicable law. For example, the concept of a trust is not easily understood by a civil law jurisdiction. Also bear in mind rules on legal costs recovery vary enormously from one jurisdiction to another.

• Consider whether any aspect of the settlement agreement may not be capable of being enforced in the relevant country due to conflict with local public policy or other overriding provision. For example, an agreement under English law that is not Shariah compliant (say where interest is payable) may not be able to be enforced in a Shariah based jurisdiction. The settlement deal may be re-structured in such a way that a similar, Shariah compliant outcome is achieved.

The New York Convention 1958

The use of Med Arb can according to some jurisdictions creates a settlement in the form of an arbitral award enforceable under the New York Convention on the Recognition and Enforceability of Arbitral Awards. Med Arb is a process whereby it is agreed from the outset either
a) if a mediation does not settle the dispute is immediately determined by arbitration; or
b) that the settlement reached at mediation will be handed down as an arbitral award.

At the time of writing, 172 States had signed the New York Convention.

AUSTRIA

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Mediation is optional in general. However, there are some fields of law, such as family law, where the court can demand an attempt for mediation. Further special quasi mediation institutions have to be used/passed before going to court in an attempt to reach out-court-settlements in some cases such as private insolvencies, between tenants/landlords in big cities, between neighbours, in some states concerning public procurement, between doctors/patients (optional), and in some B2C businesses e.g., telecoms.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
No.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
It becomes more common; those clauses are not enforceable practically if one party is not willing to participate in pre-trial negotiations.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
Infrequently in general, more frequently in family law cases or via platforms provided for consumers.

How are mediators selected for an appointment? Are they usually legally qualified?
There is an official list of mediators published in the internet by the Ministry of Justice. Each member listed has to prove the standards of qualification required by law and hold insurance. Only those registered in this list may be called a "registered mediator". The expression "mediator" itself is not protected. A mediator need not be a jurist.

There are several organisations/panels of mediators; e.g. one organized by lawyers ("AVM"), of whom all Bars in Austria are a member. In cases pending at court already, mediators (or an association whose members are mediators) or another specific judge might be proposed for the purpose of mediation only by the judge himself.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
They can be either.

How is a mediation settlement agreement enforceable?
If the parties wish the settlement agreement reached at mediation to be court enforceable, local district courts are expressly obliged in the Civil Procedure Code to protocol such settlements as court-settlements without procedure/prior filing a law suit, but half the fee for filing a lawsuit would have to be paid to the court. Such an agreement can be made enforceable by a notarial deed too.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
If used at all, mediation and arbitration, and in specific cases, expert determination. Adjudication such as is used in England to avoid litigation in construction cases does not exist. Several groups of lawyers (who underwent specific training) formed Collaborate Law-groups which offer their services in various specialized fields of law practice.

Should I mediate in your country? What are the pros and cons?
There are qualified bodies and many mediators with professional skills and various backgrounds to be chosen according to the type of conflict. Out-of-court settlements can be easily made enforceable by a quick procedural step at any district court.

Mediation has a legal basis in Austria since 2004 which established a framework for the requirements to get listed as a mediator.

Mediation is still not very common as an ADR method in general, because many cases are settled by an enforceable agreement during litigation initiated by or made with the help of the judge or by ongoing negotiations between the lawyers.

Nevertheless, in some fields of possible litigation mediation became common or an attempt to start such a process could even be obligatory or being ordered by the judge, e.g., in family and divorce cases (there might be even some financial support in such cases for the parties concerning the mediator fees).

Should I arbitrate under the laws of your country? What are the pros and cons?
There are well known and respected institutional arbitration tribunal courts in Vienna, such as the arbitration court of the ICC Austria or the Vienna International Arbitration Centre. The city is considered a neutral field for solving disputes between parties from the Eastern and Western hemisphere or Balkan states too.

The civil procedural law provides only the highest civil court as one and only way to contest an arbitrator's award primarily on formal grounds or offence against public order, so a high quality of jurisdiction by the best judges of the country is provided in such cases without wasting time at different instances.

BULGARIA

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Kalina Valchanova

Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
After the amendments in the Law on mediation and the Civil Procedure Code enacted after July, 1st 2014 mediation will be mandatory in Bulgaria in the cases and under the conditions stipulated by law. The court is obliged to invite the parties of a pending court case to participate in a first meeting in a mediation procedure, which takes place in the relevant territorial division of the district court's judicial mediation centre. Mediation is mandatory in disputes regarding:

- jointly owned property;
- judicial partition of property;
- disputes regarding the validity of decisions under the Condominium Ownership Management Act;
- payment of the company share value upon termination of participation in a limited liability company;
- liability of a manager or controller of a limited liability company for damages caused to the company.

- In other cases, the court assesses whether the dispute is appropriate for mediation procedure referral, taking into account all the relevant circumstances. Within this context, mediation is possible, but not mandatory in disputes regarding:

- family law, including divorce proceedings;
- pecuniary or non-pecuniary claims arising from a contract, unilateral transactions, tort, unjust enrichment or negotiorum gestio (the management of or interference with the business or affairs of another without authority out of necessity);
- the existence, termination, dissolution or repudiation of a contract or a unilateral transaction or the conclusion of a final contract with a claim value of up to BGN 25,000;
- ownership or possession;
- employment contracts;
- the protection of membership rights in a company or the annulment of the general company meeting's decision;
- the protection of intellectual property rights.
- The mediation in a judicial mediation centre can also be held at the initiative of the parties in a pending court case.

In all other civil and some criminal cases, the court is obliged to invite the parties to reach an agreement and to clarify to them the consequences of such an agreement.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
If a meeting in a mediation procedure was not held in the first-instance court proceedings because the court did not specify the obligation of the parties to participate in it, or one or all of the parties did not participate in the procedure, the appellate court (may) oblige the parties to participate in such a mediation procedure.
The parties are obligated to participate in a mediation procedure only once during the entire court proceedings.

The costs of a mediation procedure, held in a pending court case, are paid from the court budget. However, if the court has obliged the parties to participate in a first meeting in a mediation procedure, the party, that has refused to participate in the meeting in person or by proxy and has lost the case, shall pay the fees and costs of the case in the relevant instance. In the cases in which the first meeting in a mediation procedure was not held due to the refusal of both parties, the fees and expenses remain on them, as incurred, and the costs of the mediation procedure are paid by them equally.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in

commercial contracts? If so, are those clauses respected and enforceable?
It is common for Bulgarian commercial contracts to contain a clause for a dispute resolution via negotiations. Those clauses are respected by the contracting parties but they are not enforceable.
Arbitration is gaining popularity in Bulgaria and after July 2024 mediation will be obligatory. There are more than 1400 registered mediators as well as platforms for on-line mediation and 40 arbitration courts.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
It is common for the parties to negotiate directly and if they use a third person it is often a lawyer. A greater part of the registered mediators are actually lawyers.

How are mediators selected for an appointment? Are they usually legally qualified?

A mediator needs to be registered in the Unified register of mediators and meet the following requirements:
- has not been convicted for criminal offences at public law;
- has successfully undergone a course for mediators
- has not been deprived of the right to exercise a profession or conduct an activity;
- has a permit for long-term or permanent residence in the Republic of Bulgaria, in the event the person is a foreign national;
- has been entered in the Uniform Register of Mediators with the Minister of Justice.

Further the District courts hold lists of mediators, who may participate in mediation in pending court cases. For these mediators education in law is obligatory.

Although the mediators at the judicial mediation centres and the greater part of the other mediators are legally qualified according to the Mediation Act they are not allowed to give legal advice.
Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
The mediators in Bulgaria are purely facilitative.
How is a mediation settlement agreement enforceable?
The mediation settlement agreement, reached in a mediation procedure in accordance with the Mediation act, is enforceable as a court settlement and is subject to approval by the regional courts.
A mediation settlement agreement is also enforceable as a contract.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
Mediation is expected to gain in popularity, especially after the legal changes regarding the mandatory mediation procedure in pending court cases. Arbitration, on the other hand, already has its established place in Bulgaria with approximately 100 000 active commercial entities and 40 arbitrational courts.

Should I mediate in your country? What are the pros and cons?
As in other countries the main advantage of mediation is that it gives the opportunity to the parties to settle the dispute by themselves, which best suits their needs.

Pros:
- Although in some cases the procedure is mandatory, it can also begin with the mutual consent of the parties. The procedure also continues until the parties so wish.
- The mediation settlement agreement in pending court cases is enforceable as a court settlement.
- Most cases are settled within a couple of hours. Other cases might require several days or weeks, depending on the complexity of the issues and the will of the parties. Given the fact that a court case may be prolonged for years this is a very important advantage.
- Mediation is cheaper in comparison with court and arbitral procedures.
- All circumstances, data and documents that have become known to the participants in the course of the procedure are confidential. Confidentiality is guaranteed by the obligations of all the participants to keep confidentiality.

Cons:

- The appropriateness of family law, labour law, ownership and intellectual property rights cases for mediation procedure referral is left to the assessment of the courts, which would lessen the readiness of the parties to participate voluntarily in such procedures.
- Although mediation is gaining popularity the slightly outdated notion of a dispute resolution in front of a court still dominates in Bulgaria.

Should I arbitrate under the laws of your country? What are the pros and cons?

Pros:
- In Bulgaria the arbitration is a one instance procedure which makes it much faster compared to a court one.
- The arbitrators are usually experts on the scope of the case.
- The procedure may be modified according to the scope of the case.
- Confidentiality of the proceedings.
- The enforcement of an arbitration agreement issued by a Bulgarian arbitration court is secured to a much greater extent by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York 1958 compared with the execution of a decision of a Bulgarian state court.

Cons:
- The decisions of an arbitrational court cannot be appealed.
- Without the assistance of a state court an arbitrational one cannot execute all judicial functions such as claim securities and safeguarding.
- Arbitration is more expensive compared to the State court procedure.

CANADA (PROVINCE OF QUEBEC)

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It is important to note that Canada has a bijural system. Because of its history of colonisation by France and Great Britain, Canada and its provinces are governed by common law rules, with the exception of Quebec, whose legal system is based on civil law rules. That said, our answers will mainly address Quebec's rules in regards of mediation.

Is mediation mandatory for any type of claim in your province before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Though mediation is one of the main guiding principles in Quebec law, mediation is not mandatory in Quebec. In family law however, it is required for parties to attend an information session on mediation and parenting after separation.

The Court cannot compel parties to participate in an alternative dispute resolution process, but it is in its mission to facilitate or encourage parties to do so.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
There are no consequences of not agreeing to mediate.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
It is not common to include an obligation to negotiate and mediate in commercial contracts.
However, it is common to include an obligation to submit disputes to arbitration in commercial contracts. Those clauses are generally respected by parties, and should a party fail to respect these clauses, the Court can compel them to do so.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
Parties can seek to negotiate without a lawyer or an independent neutral. However, parties will usually negotiate with the assistance of legal counsel.

How are mediators selected for an appointment? Are they usually legally qualified?
Mediators are appointed by mutual agreement or by contracts. Parties may also ask a third party, such as the Court, to appoint a mediator.

With the exception of mediators in family law, mediators do not need to be legally certified.
Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?

Mediators are more often than not facilitative in that the goal is to facilitate discussion between the parties in view of them settling their issues.

Quebec's legal system offers parties who are engaged in litigation to take part in Settlement conferences if all parties request to do so. These settlement conferences are chaired by a judge designated by the Chief Justice.

The judge presiding the conference facilitates a dialogue between the parties and helps them identify their interests, assess their positions, and explore mutually satisfactory solutions. That being said, some judges will take on a more evaluative approach to get the parties to settle and will often do so by separating the parties in separate rooms and highlighting the strengths and weaknesses of each party's case in view of getting the parties to settle.

How is a mediation settlement agreement enforceable?
Parties may ask the Court to homologate the mediation settlement. This gives the homologated settlement the same force and effect as a judgement.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute ?
The most common alternative dispute resolution processes used are mediation and arbitration.
Arbitration is very common in labour law and especially in collective labour relations related disputes.
Mediation is also a commonly used process in small-claims disputes.

Should I mediate in your province? What are the pros and cons?
There are many advantages of mediating in Quebec.

For many types of disputes, namely small-claims disputes, or consumer-law related disputes, mediation is either free-of-charge or its fees are partially covered by the Ministry of Justice.

Parties may also seek mediation through a settlement conference, in which a judge appointed by the Court acts as a mediator between parties, in order to facilitate dialogue between parties and help them better understand their respective needs and interests.

There are no disadvantages for mediation in Quebec.

Should I arbitrate under the laws of your province? What are the pros and cons?
It is beneficial for parties to arbitrate under the laws of Quebec.

Laws in Quebec allow parties to conclude arbitration agreements that are suited to their needs and tailored to a specific subject (i.e. international maritime law).

Just like mediation agreements, arbitration awards may be homologated by the Court and become enforceable.

CZECH REPUBLIC

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Mediation is not a mandatory step before filing an action to the respective court. Nevertheless the court can compel the parties to participate in an ADR process – namely mediation. Such process is held in front of a registered mediator and can be terminated any time within the mediation process. The main principle of the mediation is it is voluntary.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
A party who refuses to attend a first mediation meeting may be penalised in the form of a reduction or complete withdrawal of entitlement to reimbursement of costs of the proceedings. There are no legal consequences of not agreeing to mediate after the mediation has commenced.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
The mediation is still a developing branch of law in Czech Republic therefore it is not very common to include obligations to negotiate and mediate in commercial contracts.

Our office does not include such clauses in the commercial contracts therefore we are not able to evaluate a possible respectability and/or enforceability of such stipulations.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
Depends on the "type" of client. Several business companies often negotiate various commercial aspects without the presence of lawyers. Often the lawyers step up when the negotiations have faltered.

How are mediators selected for an appointment? Are they usually legally qualified?
The registered mediator - attorney has to pass mediation exams that are held under the courtesy of Czech Bar Association. The register of all mediators is maintained by Ministry of Justice. The range of test circuits includes a wide range of legal issues therefore legal qualification is recommended.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
The mediator also evaluates the discussed topic based on information submitted by both parties.

How is a mediation settlement agreement enforceable?
The mediation agreement as such is not enforceable but the litigants may submit the mediation agreement to be approved and authorized by the respective court to become enforceable.

Should I mediate in your country? What are the pros and cons?
As described above the mediation proceedings are still in an early stage of development and still many litigants are not even aware of such possibility in the course of court proceedings. Nevertheless the courts are recently starting to use the possibility of mediation set out by the legislation.

Should I arbitrate under the laws of your country? What are the pros and cons?
Arbitration is used more often than mediation in Czech Republic. The main arbitration court is the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. The arbitration proceedings are substantially more formal than the mediation proceedings. The arbitration is used for commercial disputes due to its speed.

DENMARK

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation?
Can the court or tribunal compel the parties to participate in an ADR process?
Mediation is not mandatory for any type of claim before commencing arbitration or litigation. Although parties are obligated to explore possible settlement negotiations before a suit is brought before the courts. This includes exploring whether the case may be settled amicably, and if it is the case, the parties shall enter into negotiations. However, it is only an obligation to explore whether settlement is possible, and naturally not an obligation for the parties to settle the case.

Judicial mediation on the other hand has become more common, in cases brought before the courts in cases where the parties control the case and with consent from both parties. The procedure is regulated by the Judicial Administration Act and is guided by the mediator in consultation with the parties. However, the procedure is often not available in many commercial disputes due to the limitation to pending cases which prevents cases covered by agreements on arbitration.

The courts cannot compel the parties to participate in an ADR process. Danish courts encourage the disputing parties to enter into ADR by informing and referring the parties to public ADR-institutions.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
Since mediation before commencing arbitration is not mandatory, no sanctions are imposed on the party refusing to participate in an ADR process.

Although sanctions may be imposed, if the parties refrain from exploring options for settlements and the claim is found to be unreasonable. In such case, it may have an effect on the decision by the court when awarding attorney fees and costs.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
It is becoming more common that parties need to have tried to solve the dispute by mediation before commencing in litigation or arbitration. Multi-tiered dispute resolution clauses in commercial contracts are also seen more often. Courts and tribunals will typically respect these clauses. However, jurisprudence from Danish courts on such clauses is extremely rare. The courts yet have to determine the requirements of enforceability on such clauses.

Mediation is still voluntarily, and a party can always end mediation on their own initiative. It is therefore possible to argue that a party can consider the possibility of mediation and afterwards and then reject it as inappropriate and then still comply with the clause.

How are mediators selected for an appointment? Are they usually legally qualified?
Formally, there are no specific requirements for the appointment of a mediator. Mediators are selected based upon their experience, education and personally qualifications and personality.

Mediators need a fundamental education and training in mediation. Since there are no specific requirements, mediators do not need to have a legal background. Although mediators must have practical experience and substantive expertise in the substantive area of the dispute.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
No. The parties will negotiate any dispute with assistance from lawyers or mediators.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
The mediator can be facilitative as well as evaluative. However, they will mostly be facilitative and assist the parties in reaching a mutually agreeable resolution. The mediator is in charge of the process, while the parties are in charge of the outcome.

There is an assumption that an evaluative mediator must have substantive expertise or legal expertise in the substantive area of the dispute. Based on this assumption, most evaluative mediators would be attorneys.
Whether the arbitrator should be facilitative or evaluative will in any case depend on the character of the dispute and the parties' expectations and interest.

How is a mediation settlement agreement enforceable?
A mediation settlement can be enforceable if the parties agree upon it. Based upon mutual agreement, the parties can include an enforceable clause in the settlement agreement. However, is not typical to include an enforceability clause.

A mediation settlement can be converted into a juridical settlement. The parties can apply to a competent court for approval of their settlement and thereby have it become a judicial settlement. In such case, this judicial settlement has the effect of a final judgment and may be enforced against the will of the other party.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
Arbitration is commonly used as a dispute resolution in commercial contract, and in particular in construction contracts. The use of multi-tiered dispute resolution clauses is also becoming increasingly common in commercial agreements.

Mediation is also becoming more extensively used as dispute resolution.

Should I mediate in your country? What are the pros and cons?

The pros:
- Denmark is internationally minded and can provide experienced mediators (and arbitrators) with technical expertise and knowledge of the law and culture of different countries. This provides for a neutral forum and setting where parties from all over the world can feel safe to mediate their disputes in an efficient and fair process.

The cons:
- Mediation is not yet commonly applied as a choice for dispute resolution. However, mediation is becoming more applicable in commercial disputes.

Should I arbitrate under the laws of your country? What are the pros and cons?

The pros:
- The Danish legal system is a hybrid between civil law and common law. This makes Danish law an excellent choice when determining which country's law to arbitrate under, especially in cases where one party is from a common law jurisdiction and the other party is from a civil law jurisdiction. Furthermore, Denmark has a favourable arbitration policy that has defined the courts' positive approach to arbitration agreements and disputes. Danish courts assist with the arbitral process when necessary and consistently enforce arbitral awards.

ENGLAND & WALES

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Mediation is currently voluntary for all types of claims. However before commencing divorce proceedings, it is necessary to have considered mediation and to attend a Mediation Information and Assessment Meeting ("Miam"). The courts frequently stay proceedings to enable the parties to attempt to settle by mediation, but the parties are never compelled to do so. There are proposals to introduce compulsory referral to mediation for defended claims less than £10,000 and possibly this approach will be followed for larger claims.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
Frequently the courts impose cost sanctions on parties who unreasonably refuse to litigate. This matter will only be considered after the substantive hearing. For example, a party who wins at court but unreasonably refused to mediate may recover only two thirds of their costs from the other party. A party who loses at court who unreasonably refused to mediate, may have to pay the winner's costs on a (higher) indemnity basis, which may be disproportionate to the matter at stake. It has further been held that failure to respond to an invitation to mediate within two weeks can constitute an unreasonable refusal.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
It is an increasingly common practice to include such clauses in commercial contracts. An agreement to negotiate is not enforceable under English law. It follows that an agreement to mediate is enforceable only if it refers to the Mediation Rules of a mediation provider such as IPOS Mediation (https://mediate.co.uk/) that will set up a mediation in default of agreement by the parties. Examples of enforceable multi-tier clauses are available at https://www.rebeccaattreemediator.com/sample-mediation-clauses/

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
The parties will usually seek to negotiate a dispute using a solicitor, and increasingly, a mediator.

How are mediators selected for an appointment? Are they usually legally qualified?
Mediators may be selected by reputation, or increasingly by reference to major mediation providers such as IPOS Mediation (https://mediate.co.uk). The Civil Mediation Council keeps a list of mediators registered with them who fulfill certain criteria and meet certain standards. Many mediators are legally qualified, but they do not have to be.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
Mediators may be facilitative or evaluative. There is an increased demand for mediators who will provide some degree of evaluation of where a settlement may lie.

How is a mediation settlement agreement enforceable?
A mediation agreement is enforceable in contract. If the matter is subject to litigation, the settlement agreement will become a schedule to a Tomlin Order that will be sealed by the court, thereby becoming enforceable as a court order. The UK government has announced its intention to sign the Singapore Convention on Mediation.

What types of ADR process are commonly used?
The most popular forms of ADR are mediation and arbitration. Mediation is used for a wide range of disputes, especially in view of the costs sanctions mentioned above. Arbitration is popular for international commercial claims since the award can rarely be appealed, giving a final solution quicker than litigation.

Should I mediate in your country? What are the pros and cons?
Mediation is well established in England and Wales. There are many experienced mediators and approximately 92% settle on the day or soon after. Mediation is a more cost effective and quicker method of resolving a dispute than going to court or arbitrating.

Should I arbitrate under the laws of your country? What are the pros and cons?
Arbitration is well established by legislation, practice and Arbritral bodies in England and Wales. The quality of arbitrators available, ease of language and the reputation of England and Wales as a centre of excellence for international trade make it a good choice of venue for arbitration.

FRANCE

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation?
Mediation is mandatory for specific claims in family matters. For any other claim, at any time of the procedure, the judge can order parties to meet with a mediator, who will then explain to them the purpose and process of a mediation procedure. The parties are then obliged to comply with the judge's order and must be able to provide evidence of their compliance, but they are not bound to follow through an entire mediation procedure.

The judge may also invite the parties to use an alternative dispute resolution method, but this invitation does not impose any obligation on the parties. If the parties accept the judge's proposal to use an alternative dispute resolution method, he/ she will issue a conciliation order.

Based on the principle of the voluntary nature of mediation, there are no consequences for refusing to participate in a mediation process in civil proceedings.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts?
In commercial contracts, it is now increasingly common to insert obligations to negotiate and mediate before commencing arbitration or litigation. It is also common to include an arbitration clause, whereby the parties agree to submit any of their future conflict to arbitration, especially for large companies or in international commercial contracts.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
It is frequent that parties first seek to negotiate a dispute without a lawyer or an independent neutral. In many cases, they will ask their lawyer to intervene to try to reach an agreement with the other party. Their main concern is to try to avoid the costs of legal proceedings and the uncertainties and length of such proceedings in France.

How are mediators selected for an appointment? Are they usually legally qualified? If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
Mediators can either be selected by the judge, or by the parties themselves.
The mediator is chosen from a list of judicial mediators registered at each Court of Appeal. The list is drawn up every three years by the general assembly of judges of the court of appeal. A physical person as well as a legal entity (association, mediation centre) can apply for registration. In cases of conventional mediation, parties can prefer to select an ad hoc mediator.

Mediators are legally qualified. A natural person may only be registered on the list of mediators if he or she meets the following conditions:

- Not to have been the subject of a conviction, incapacity or disqualification mentioned in the criminal record.
- Not to have acted in a manner contrary to honor, probity and good morals that has given rise to a disciplinary or administrative sanction of dismissal, striking off, revocation, withdrawal of approval or authorization.
- To provide evidence of training or experience attesting to the aptitude to practice mediation
- When they are first registered on the list or when they are re-registered after being struck off, mediators take an oath before the Court of Appeal on whose list they are registered. For a legal entity, the oath is taken by its president or its legal representative.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?

The mediator is purely facilitative: a mediator's role is to hear the parties and confront their respective point of view to enable them to find a solution to their conflict. Their mission is to act as a third neutral party and to create a space

where dialogue between parties is made easier.

How is a mediation settlement agreement enforceable?
To be enforceable, a mediation settlement can be submitted to the approval of the judge competent to hear the dispute in the matter concerned. It is up to the most diligent of the two parties to initiate proceedings before the Court. In this case, the judge cannot modify the terms of the agreement: its role is to make sure that the settlement's content follows French notions of "public order" and "morality"

What types of ADR process are commonly used? Is a particular process popular?
Mediation and arbitration are the most used ADR processes. The use of mediation is particularly widespread in family law issues.

Should I mediate in your country? What are the pros and cons?
Lawyers from other E.U. member states can mediate in France if they satisfy the three conditions mentioned earlier.

There are advantages to mediate in France. Currently, there is a major momentum in favor of ADR in France, where the practice is encouraged by the legislator as well as by the judge.

The first advantage of mediation over court proceedings is its speed. There is a problem of delays in the French judicial system. Moreover, mediation avoids the procedural difficulties that clients find increasingly difficult to understand.

French law provides the mediator with a wide freedom of choice of means to carry out its mission. For instance, he can hear third parties or look for elements of fact ultra petita. This freedom of action allows the mediator to look for the real cause of the conflict between the parties, beyond the framework of their claims, to reach an agreement.

However, the main disadvantage of using mediation is that it takes two to mediate. All parties must agree to participate in a mediation measure. Very often if the attempt to negotiate between lawyer fails, the prospect of successful mediation seems remote.

Should I arbitrate under the laws of your country?

Lawyers from other E.U. member states can arbitrate in France. There is no obligation to arbitrate under French Law: the principle is the parties' freedom of choice concerning the law governing their arbitration.

The advantage of arbitrating under French law is that French law is known for its stability, particularly in commercial matters. Moreover, the codification of French law provides a high degree of legal certainty, which makes it particularly attractive for arbitration.

There are well-established arbitration institutions in France. Although many believe that arbitration costs more money than going to court, arbitration usually promotes better cost control. By avoiding the uncertainties of litigation and making procedural choice appropriate to their dispute, the parties can limit the costs of the procedure.

GERMANY

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation?
The 16 states have legislative competence for this. Some states have used this competence to make pre-trial mediation mandatory for neighbourhood disputes, some for libel and slander by natural persons and some for small claims. Some states have repealed it for small claims because mandatory mediation failed to relieve the pressure on the courts. The court or tribunal cannot compel the parties to participate in an ADR process. But judges often use ADR techniques when proposing a settlement.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences) No.
Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts?
No, but this is seen occasionally. We have not heard of or seen any attempt to enforce them.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
Yes.

How are mediators selected for an appointment?
For the cases of mandatory mediation there is a list of mediators available at the town hall and the district court. This list can also be used to find a mediator for non-mandatory cases.

Are they usually legally qualified?
Some are.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
They will start being facilitative and might later ask the parties whether they wish an evaluative approach.

How is a mediation settlement agreement enforceable?
If it is documented by a mediator from the list mentioned earlier it is an enforceable instrument falling under art. 58 of the Recast Brussels I Regulation. In other cases parties to the settlement might agree to make an enforceable notarial deed.

What types of ADR process are commonly used? Is a particular process popular?
ADR is available for almost everything except status issues (because status cannot be waived)
early neutral evaluation if this makes negotiations easier
expert determination used particularly when a question
of fact is in dispute (e.g. Is this a defect? Who has caused the defect?)
We have not yet heard of med arb in Germany
Arbitration is relatively rarely used because it is often more expensive and slower than litigation.

Should I mediate in your country? What are the pros and cons?
Pros: if you wish a neutral nation; mediator has usually lower costs to cover than in London, Paris or Switzerland.
Cons: Language problems
Should I arbitrate under the laws of your country?
The rules in the Code of Civil Procedure about arbitration were revised as per 1st January 1998 based on the UNCITRAL model law, so they are "state-of-the-art" and they avoid obstacles.
What are the pros and cons?
The same as for and against mediation.

GREECE

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Is mediation mandatory for any type of claim in your country?
In accordance with the provisions of the Greek Law on Mediation no 4640/2019, civil and commercial law cases could be subjected to Mediation if all parties involved agree to enter the process voluntarily. Nevertheless, there are a list of cases that are subjected to a Initial Mandatory Mediation Session (IMMS) during which the Mediator informs the parties, who are accompanied by their lawyers, Mediation and its procedure. This list includes civil and commercial law cases.
After the conclusion of this session, if the parties have agreed to subject their case to Mediation, they sign the Mediation Agreement and move on.
The Greek Court can only suggest but not refer a dispute to be resolved through the process of mediation.

If it is not mandatory, are there any consequences of not agreeing to mediate?
If the requesting party doesn't initiate and attend the IMMS, their Lawsuit won't be judged at Court. If the Responding Party doesn't attend the IMMS, he/she may subject a fine (from 100 to 500 euros). But there is no consequences if they don't agree to mediate

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts?
Yes, it is common.

If so, are those clauses respected and enforceable?
If such clauses exist as above, it is mandatory to initiate the Mediation Procedure.
If one party breaks the clause of the contract by proceeding straight to litigation, the other party shall be entitled to raise an objection based on abuse of right.

Will parties frequently seek to negotiate a dispute without a lawyer or an independent neutral such as a mediator?
In some cases, they take this initiative. Yet, the chances are that they will seek a lawyer's advice and if the negotiation between two lawyers of the Parties don't resolve the case, they will probably seek for a Mediator's assistance.

How are mediators selected for an appointment? Are they usually legally qualified?
There are public records kept at the Ministry of Justice and all accredited Mediators are included in these Records. The Parties' Lawyers usually suggest a Mediator to the Parties and all of them should agree on who this person should be.

Is the mediator purely facilitative or are they evaluative (i.e give a recommendation on the terms upon which the dispute should be resolved)?
His/ her role is purely facilitative.

How is a mediation settlement agreement enforceable?
The Law provides that the Mediation Minutes which include the Agreement of the Parties and are signed by the Mediator and the parties, constitutes an enforceable document after having been filed at the registry of the Court where the hearing of the case would take place.

Are early neutral valuation, expert determination, adjudication or med arb frequently used in your country? If so, for which types of dispute?
No.

Should I mediate in your country? What are the pros and cons?
Definitely.

In Greece there is a safe legislation environment regulating mediation.
Accredited mediators following a strict code of ethics, low costs and most of all the fact that the Minutes of Mediation are totally enforceable under the Greek laws, render mediation an advisable choice.

Should I arbitrate under the laws of your country? What are the pros and cons?
It is a popular belief in Greece that arbitration is not a valid option because of the high costs. However, this is not necessarily accurate. We believe that arbitration is a good option and therefore we urge our clients to accept arbitration clauses in contracts.

Felios & Associates Law Firm, in cooperation with Eleni Plessa, Attorney at Law, Accredited Mediator, Mediators' Trainer

HUNGARY

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SZECSKAY
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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Generally mediation or other types of ADR methods are not mandatory in any type of legal dispute.
The two exemptions in civil and commercial cases are (a) lawsuits between businesses and (b) certain special family law matters.

If there is a legal dispute between two businesses, then the Code of Civil Procedure requires the parties to attempt negotiations before they would be allowed to go to court. This negotiation however does not have to be mediation; a simple exchange of letters for example would satisfy the court.

In certain family law matters (usually where parental rights are disputed) it is obligatory for the parties to attempt mediation. They must participate in the first mediation session, however it is not mandatory to continue the mediation any further, or to reach an agreement.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
In the above cases (a) if a business does not verify to the court that it has attempted negotiations before filing the claim, its claim will be rejected on formal grounds; (b) in the above family law lawsuits, if one party fails to participate in the mediation session, the court may impose a fine on him/ her.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
As mentioned above, according to the Code of Civil Procedure, it is mandatory to try to resolve disputes out of court between businesses before one would submit its claim to the court.

Partly because of that, it is a common contractual clause that the contracting parties undertake to settle their disputes by way of negotiations. In many cases though, the parties look at these clauses as a formality, and do not make a real effort to settle the actual disputes out of court.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
If both parties have a real intention to negotiate a settlement of a dispute, then usually they start the negotiations between each other without the involvement of lawyers or mediators.

In our experience, in many cases the parties in a dispute only involve lawyers or mediators if the first rounds of their negotiations were not successful.

How are mediators selected for an appointment? Are they usually legally qualified?
Mediators are selected by the parties with a common consent. To become a mediator, one has to pass an accredited mediation training, hold a degree and have 5 years of professional experience in his/ her field of expertise. They are also obliged to attend further training every 5 years. The registry of mediators is maintained by the Hungarian Ministry of Justice. Although legal skills are not required, the majority of Hungarian mediators are lawyers in practice.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
The qualified mediator impartially facilitates the session but does not recommend a solution.

How is a mediation settlement agreement enforceable?
The mediation settlement is consensual and compliance by the parties is voluntarily; therefore it does not have legal consequences. In case of non-compliance the dispute can be moved to court or arbitration.
However the parties have the opportunity to incorporate their agreement into a legally binding document, which in that case of course becomes enforceable in contract.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
ADR methods are relatively newcomers to the Hungarian legal system, and not used as frequently as litigation. Mediation is a developing new field sometimes with experts involved. Arbitration is mainly used on an international level when multi-national companies are involved.
Other ADR methods are currently not used frequently in Hungary.

Should I mediate in your country? What are the pros and cons?

Pros
- Mediation can be a quick, cost effective, out of court settlement of the dispute.
- The services of highly qualified mediators are available on the Hungarian market.

Cons:
- Mediation is a relatively new method in Hungary, so many people are not familiar with it and there is a chance that they would not agree to it, because of that.
- There are few legal regulations for mediation proceedings, so if the parties are not cooperative and cannot agree on procedural matters, the mediation procedure might fail.

Should I arbitrate under the laws of your country? What are the pros and cons?
In general we recommend arbitration in Hungary.

Pros:
- The procedure takes substantially less time than the courts. This is especially important, because Hungarian court proceedings might take years to complete.
- In special legal matters, arbitrators might have more expertise than regular judges.
- There are established arbitration institutions in Hungary, who are also prepared to handle high- profile, international cases.
- Arbitral awards are binding in Hungary and are enforceable both domestically and abroad, as Hungary is a party to the New York Convention.

Cons:
- Arbitration is much more expensive than court

Legal remedies against an arbitral award are very limited. No appeal is available and the court can only set aside an arbitral award for a very limited number of reasons.

ITALY

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
According to Legislative Decree no. 28/2010, mediation is compulsory only in disputes concerning the following matters: Joint ownership, Rights in rem, Division, Inheritance, Family agreements, Renting, Commodatum, Rent of company, Damages arising from medical and healthcare liability, Defamation through the press or by other means of advertising, Insurance, banking and financial contracts.

Starting from 30 June 2023, Legislative Decree No. 149/2022 (the so called "Riforma Cartabia") provided for the extension of compulsory mediation to claims related to joint venture, franchising, services, network, outsourcing, subcontracting, partnerships and consortia agreements.

Irrespective of the subject matter, by a reasoned order, the judge - taking into consideration the nature of the proceedings, the phase of the process, the behaviour of the parties and any other relevant circumstances - can also decide the recourse to mediation.

Furthermore, according to the mentioned "Riforma Cartabia", the mediation is compulsory also in case the contract, the articles of association and the memorandum of the public or private body provide for a mediation clause.

Failure to comply with the mandatory mediation must be raised by the defendant, under penalty of forfeiture, or remarked on by the Court, no later than at the first hearing.
In all the mentioned cases, the attempt of mediation is a condition for the continuance of the proceedings.

In case of mandatory mediation, in order to fulfil said condition, in specific cases (for example disputes in banking and financial matters), instead of the mediation procedure under the Decree, some alternative mediation processes can be used.

The mandatory mediation does not prevent, in any case, the granting of interim measures, including protective measures, or the publication of the claim and pleas.

If it is not mandatory, are there any consequences of not agreeing to mediate?
If the mediation is not mandatory, there are no consequences of not agreeing to mediate.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
Mediation clauses in commercial agreements are recently becoming more frequent, especially in Business to Consumer contracts.

As per the first paragraph, according to Legislative Decree no. 28/2010, such as amended by "Riforma Cartabia", the mediation clause contained in a contract is enforceable and makes the mediation mandatory.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
After the entrance in force of Legislative Decree no. 28/2010, direct negotiations between the parties without lawyers and a Mediator are not frequent due to: a) the large number of matters covered by the mandatory mediation, in which the assistance of a lawyer is mandatory; b) the tax advantages provided if the settlement agreement is reached through mediation procedures; c) the direct enforceability of the mediation agreements signed by all the lawyers of the parties.

How are mediators selected for an appointment? Are they usually legally qualified?
The rules of the ADR bodies must provide – by law – the possibility that the parties voluntarily and mutually indicate the same mediator, for the purpose of his or her possible nomination by the ADR body. Moreover, the law provides that if the mediator is not jointly chosen by the parties, the ADR bodies shall appoint the right mediator among those

accredited, taking into account professional competencies, also derived from the type of university degree held, besides other factors of competence and professionalism.

To perform the task of mediator a professional mediator who has passed an accredited training course (organised and managed by an accredited ADR training centre) needs to be accredited into the mediators' panel of an accredited ADR provider, otherwise he or she cannot operate.

Mediators must possess at least a bachelor's degree or, alternatively, must be enrolled in a professional association or board.

Moreover, an accredited mediator must meet the following criteria:
- he or she must not have a criminal record;
- he or she must not be permanently or temporarily disqualified from public office;
- he or she must not be the subject of preventive or security measures or safety;
- he or she must not have been the subject of disciplinary sanctions other than disciplinary warnings.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
Generally speaking the mediator is purely facilitative.
However, according to article 11 paragraph 1 of Legislative Decree no. 28/2010, if no agreement is reached, the mediator can issue a non-binding proposal about the resolution of the dispute (it is a duty if the parties, mutually, request it to him/her). If either party refuses the proposal, the mediation is considered failed and any party may commence a lawsuit, but the refusal may affect the allocation of judicial expenses where the final decision in the following proceedings is equivalent to the mediator's proposal.

How is a mediation settlement agreement enforceable?
If the parties settle the dispute and the agreement (copied or attached to mediation minutes) is signed also by their lawyers, it becomes immediately enforceable, like a court decision. In the other cases, the agreement must be homologated in advance by the President of the competent Court, who has to verify that the content is not contrary to public policy or mandatory rules, and checks for compliance with formalities. The agreement homologated by the President of the competent Court constitutes an enforceable title.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
The main ADR processes used in Italy are Arbitration and Mediation (the latter after the entry in force of Legislative Decree no. 28/2010).

Arbitration clauses are usually included in business to business agreements between large-sized companies.
Mediation processes are obviously more common in matters where the conciliation is mandatory.

Since 2014 another type of ADR process has been introduced in Italy, called negotiation assisted by lawyers ("Negoziazione assistita"), which consists of an agreement by which the parties agree to cooperate in good faith and loyalty to solve the dispute amicably with the assistance only of lawyers, without an independent neutral: the agreement eventually reached between the parties is directly enforceable.

Assisted negotiation by lawyers is a condition precedent to bringing a suit in a Civil Court in disputes relating to compensation for damages caused by cars and boats, disputes arising out of a contract of carriage or sub-carriage (except for some specific cases) and in all claims for payments up to € 50,000.00.

Legislative Decree No. 149/2022 (the above mentioned "Riforma Cartabia") has extended the possibility of resorting to the assisted negotiation procedure for labor disputes as well. This will enable the parties, with the assistance of lawyers or labor consultants, to sign final and non-appealable conciliation agreements, for all intents comparable to those signed in "protected premise". Mediation in labour disputes does not constitute a condition for proceeding to Court.

Should I mediate in your country? What are the pros and cons?
In Italy the mediation is certainly advisable, especially compared to court proceedings, both for the duration of the procedure (not more than 3 months by law, compared to an average duration of a civil proceedings of about 2/3 years), the small expenses for mediation procedures (much lower than the litigation), and finally for the tax benefits when an agreement is reached. Moreover mediation is a flexible process that provides parties with the possibility to

access to a wide range of outcomes that are not available in litigation.

Mediation in Italy does not present particular disadvantages.

Should I arbitrate under the laws of your country? What are the pros and cons?
In Italy arbitration is governed by specific rules of the Civil Procedure Code and it is subject to the existence of an express arbitration clause included in the agreements which shows that the parties want to solve the dispute before the arbitrator instead of the Court.

Arbitration is definitely more convenient than legal proceedings in terms of duration and confidentiality of information and documents relating to the dispute. On the other hand, arbitration procedures are generally expensive and for this reason are commonly used in business to business contracts between large-sized or multinational companies.
By Legislative Decree No. 149 of 10 October 2022 (the "Decree 149/2022", so called "Riforma Cartabia" mentioned above), the Italian Government has introduced significant amendments to the Italian rules governing the arbitration proceedings. The amendments concern various aspects of the proceedings, such as the independence and challenge of arbitrators, the power to grant provisional measures, and the recognition of foreign awards.

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Mediation is not mandatory before commencing arbitration or litigation unless the parties included it in a contract. A court or a tribunal cannot compel parties to participate to an ADR process.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
There are no consequences for parties not agreeing to mediate.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
In a limited number of areas it is common to include such obligations (finance, construction). If so these clauses are respected and enforceable. However the judge has a limited right to control the content of these clauses.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
Historically no, but in the last five years it has begun to change.

How are mediators selected for an appointment? Are they usually legally qualified?
Mediation can be judicial or conventional:
Judicial: parties can choose their mediator from a list of mediators authorized by Ministry of Justice. The article 1251- 1-3 of the "Nouveau code de procédure civile" describes what qualifications are required to become a mediator authorized by Ministry of Justice.

Conventional: parties can choose any person as a mediator whether or not he/ she is authorized by the Ministry of Justice. The qualification required is described under article 1251-2 (2) of the "Nouveau code de procédure civile". Usually the mediators are authorized members of associations of mediators.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
A mediator is purely facilitative.

How is a mediation settlement agreement enforceable?
The mediation procedure is confidential. If parties reach an agreement, one party or all parties can petition the President of the Tribunal d'Arrondissement to approve the agreement which becomes enforceable.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
Historically ADR processes are not commonly used.

Should I mediate in your country? What are the pros and cons?
The pros:
- Mediators are highly qualified
- Mediation procedure is quicker than judicial procedure

- It is cheaper
- The process is confidential
- If parties find an agreement it is their solution

Should I arbitrate under the laws of your country? What are the pros and cons?
The pros:
- Arbitrators are highly qualified
- Arbitration procedure is quicker than judicial procedure
- The process is confidential

The cons:
- It can be expensive
- It is mandatory to obtain an agreement between the parties to use mediation.

MEXICO

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
In Mexico, only some specific laws and regulations permit or even require mediation or other ADR methods prior to initiating a litigation dispute, therefore mediation is not mandatory in all branches of law. It is clear that this practice is advancing widely as an alternative way of dispute resolution (ADR) and the goal is for it to be implemented and complied with in all specialties.
If the law does not establish mediation as mandatory, the court or tribunal cannot force the parties to participate in an ADR process, in that case the participation of the parties would be voluntary. However, according to the Federal Alternative Dispute Resolution Act, the court or tribunal may suggest or encourage the parties to participate in an ADR process, and may even suspend the proceedings to allow the parties to explore ADR options.
Ultimately, it is up to the parties to decide whether to initiate an ADR process or to proceed with litigation. Engaging in ADR can be a faster, less costly and more amicable way to resolve disputes, so it is worth considering as an option.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
In the event that mediation is not mandatory within the proceeding or if a party decides not to participate, the judge does not have the power to force them to submit to this procedure and there will be no direct consequences or sanctions for that decision. However, it is inevitable that there are economic consequences that could affect the parties, given the expenses that are generated during the processing of the trial, regardless of the fact that the winning party can collect the expenses incurred during the procedure (this is not always the case) and on the other hand we have the loser who has to pay what they areordered to pay plus the expenses incurred by their defence.
In general, there are no direct legal consequences for refusing to mediate.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
Yes, it is common for commercial contracts in Mexico to include obligations to negotiate and mediate before initiating arbitration or litigation. These clauses are often referred to as “dispute resolution clauses” and are included to encourage the parties to resolve disputes in an amicable, timely and cost-effective manner.
In general, these clauses are respected and enforceable under Mexican law, as long as they do not violate public policy or other legal principles.
It is important to note that a court will generally only order specific performance of a mediation or negotiation clause if it is clear and unambiguous, and if the parties have acted in good faith to comply with the clause.
While contractual obligations to negotiate and mediate prior to initiating arbitration or litigation are generally respected and enforceable in Mexico, it is important to draft these clauses carefully and with the assistance of legal counsel to ensure that they are clear and enforceable in the specific circumstances of the case.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
It is possible for parties to negotiate a dispute directly without an attorney, however in many cases it is not successful given that the parties are the ones directly involved in the problem. However, in practice, parties in Mexico often seek legal representation or the assistance of a neutral third party to help them navigate the dispute resolution process and reach a fair and equitable resolution.
One reason is that legal disputes can be complex, and parties may not have the experience or knowledge to fully understand their legal rights and obligations. In addition, disputes can be emotionally charged, making it difficult for the parties to engage in constructive dialogue and find common ground.
By working with an attorney or a neutral third party, such as a mediator, parties can benefit from the expertise and unbiased, objective perspective of an experienced professional who can help them understand the legal issues at stake, manage their emotions and facilitate a constructive dialogue. This can lead to a quicker and more effective resolution of the dispute, while helping to preserve the relationship between the parties.

How are mediators selected for an appointment? Are they usually legally qualified?

In Mexico, the process of selecting mediators may vary depending on the circumstances of the case and the preferences of the parties involved. In some cases, the parties may agree on a specific mediator based on his or her experience, expertise and reputation. In other cases, the court or tribunal may appoint a mediator based on his or her qualifications and experience.

Professional organizations in Mexico, such as the National Mediation Council, offer training and certification programs for mediators, which can help ensure that mediators have the skills and knowledge necessary to effectively manage the mediation process and assist the parties in reaching a resolution.

In general, the selection of a mediator will depend on the specific circumstances of the case and the preferences of the parties involved. Although legal qualifications are not always required, many mediators in Mexico have legal training or experience, and may also have additional training or certification in mediation skills and techniques.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?

In Mexico, the role of the mediator can vary depending on the specific circumstances of the case and the preferences of the parties involved. However, in general, most mediators in Mexico take a facilitative approach to mediation, rather than an evaluative one.
While some mediators in Mexico may offer evaluative feedback or suggestions, the vast majority of mediators take a facilitative approach to mediation. This approach emphasizes the importance of allowing the parties to maintain control over the outcome of the dispute, rather than relying on the mediator to make decisions or provide recommendations.

How is a mediation settlement agreement enforceable?

In Mexico, a mediation settlement agreement can be enforceable through the Mexican legal system if it meets certain requirements.

First, the mediation settlement agreement must be in writing and signed by the parties. The agreement should clearly identify the parties, the nature of the dispute, and the terms of the settlement. It should also include a statement indicating that the parties have voluntarily agreed to the terms of the settlement.

Once the mediation settlement agreement is signed, the parties may submit it to a judge or court for approval. The judge or court will review the agreement to ensure that it is not contrary to Mexican law, public policy, or morality. If the agreement meets these requirements, the judge or court will issue a judgment approving the settlement and making it enforceable.

If one of the parties fails to comply with the terms of the settlement agreement, the other party can seek enforcement through the Mexican legal system. This may involve filing a lawsuit or petitioning a court to enforce the settlement agreement.

Overall, a mediation settlement agreement can be enforceable in Mexico if it meets the necessary legal requirements and is approved by a judge or court. Once the settlement is approved, the parties can rely on the Mexican legal system to enforce the terms of the agreement if necessary.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?

You might consider:

a. mediation
b. early neutral evaluation
c. expert determination
d. adjudication
e. med arb (ie The parties agree to mediate and agree in advance if the dispute is not resolved they will arbitrate).
f. arbitration

In Mexico, a variety of ADR processes are commonly used, including:
Mediation: Mediation is a popular ADR process in Mexico, particularly for commercial disputes. Mediation allows the parties to work together with a neutral third party to resolve the dispute, often without the need for formal legal proceedings. Mediation is often used for disputes involving contracts, real estate, employment, and other commercial matters.

Arbitration: Arbitration is another commonly used ADR process in Mexico, particularly for international disputes. Arbitration involves the parties submitting the dispute to an arbitrator or panel of arbitrators, who then make a decision that is binding on the parties. Arbitration is often used for disputes involving international trade, construction, and intellectual property.

Early neutral evaluation: Early neutral evaluation is a process in which a neutral third party evaluates the strengths and weaknesses of each party's case and provides a non-binding assessment of the likely outcome if the case goes to trial. Early neutral evaluation can be used to help the parties assess the strengths and weaknesses of their case and identify possible settlement options.

Expert determination: Expert determination is a process in which the parties submit a dispute to a neutral third party who has expertise in the relevant subject matter. The expert then makes a decision that is binding on the parties. Expert determination can be used to resolve disputes involving technical or scientific issues.

Adjudication: Adjudication is a process in which a neutral third party makes a decision that is binding on the parties. Adjudication is often used in construction disputes, where an adjudicator is appointed to make a quick decision on the dispute before the project is completed.

Should I mediate in your country? What are the pros and cons?

Whether or not to mediate litigation in Mexico will depend on the specific circumstances of the case. However, here are some general pros and cons of mediation that may help you make a decision:

Advantages:

- Cost-effective: Mediation can be less expensive than litigation or arbitration.
- Time Efficient: Mediation is usually faster than litigation or arbitration.
- Confidentiality: Mediation is a confidential process, which can be especially important in sensitive or private litigation.
- Control: Mediation allows the parties to have more control over the outcome of the litigation, as they are involved in the decision-making process.
- Preservation of relationships: Mediation can help preserve or repair relationships between parties, which is especially important in business-to-business or intra-family litigation.

Disadvantages:

- Mediation is a voluntary process in many cases and there is no guarantee that the dispute will be resolved.

Should I arbitrate under the laws of your country? What are the pros and cons?

Whether or not to arbitrate a dispute under the laws of Mexico will depend on the specific circumstances of the case.

However, here are some general pros and cons of arbitration that may help you make a decision:
Pros:

- Expertise: Arbitration can provide access to arbitrators with expertise in the relevant area of law or industry, who may be better suited to resolving complex disputes than a judge or jury.
- Flexibility: Arbitration allows the parties to have more control over the process, including the choice of arbitrator, the location of the arbitration, and the rules governing the process.
- Confidentiality: Like mediation, arbitration can be a confidential process, which can be particularly important for sensitive or private disputes.
- Enforceability: Arbitration awards are generally easier to enforce internationally than court judgments, due to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- Finality: Unlike litigation, which can be appealed, arbitration awards are generally final and binding, providing closure to the dispute.

Cons:

- Cost: Arbitration can be more expensive than litigation, particularly if the dispute is complex or the arbitration process is prolonged.

Limited discovery: The discovery process in arbitration is often more limited than in litigation, which can make it more difficult to obtain important evidence.
Lack of transparency: Arbitration is a private process, which can be less transparent than court proceedings.
Limited judicial review: Unlike court judgments, arbitration awards are generally not subject to review by the courts, which can limit the ability of a party to challenge an unfavorable decision.
Risk of bias: Like any decision-making process, there is a risk of bias on the part of the arbitrator, particularly if they have a relationship with one of the parties.

THE NETHERLANDS

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
In the Netherlands, mediation is not mandatory for any type of claim before commencing arbitration or litigation. However, the court or tribunal can encourage the parties to participate in alternative dispute resolution (ADR) proceedings such as mediation, arbitration, or binding opinion proceedings.

Under Dutch law, the court has the power to refer the parties to mediation or other forms of ADR if it deems it appropriate. The court may also order a stay of proceedings to allow the parties to participate in mediation or other forms of ADR. However, the court cannot compel the parties to settle their dispute through ADR if they do not wish to do so.

In practice, in the Netherlands, parties to a dispute often engage in mediation or other forms of ADR before resorting to arbitration or litigation, as it can be a more cost-effective and efficient way of resolving disputes.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
There are no consequences to not agreeing to mediate.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
Yes, it is common in the Netherlands for commercial contracts to include clauses that require the parties to attempt to negotiate or mediate a dispute before commencing arbitration or litigation.

In the Netherlands, such clauses are generally respected and enforceable, as they promote the principle of party autonomy and the idea that parties should have the freedom to resolve their disputes in the manner that they choose. However, the enforceability of these clauses can depend on various factors, including the specific wording of the clause, the circumstances of the case, and whether the parties made a good faith effort to comply with the clause.

Under Dutch law, courts are generally reluctant to interfere with contractual provisions that provide for alternative dispute resolution mechanisms such as negotiation or mediation, as these mechanisms can often be more cost-effective and efficient than traditional litigation. However, if one party fails to comply with the escalation clause, the other party may be entitled to seek damages for breach of contract, or the clause may be considered to be waived.

It is important for parties to carefully consider the wording of any escalation clause and to ensure that it is clear, unambiguous, and enforceable. Parties should also be prepared to engage in good faith negotiations or mediation, as failure to do so could result in the clause being unenforceable or waived.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
It is not uncommon for parties in the Netherlands to attempt to negotiate a dispute directly, without the assistance of a lawyer or an independent neutral such as a mediator. Direct negotiation can be a cost-effective and efficient way for parties to resolve their disputes, particularly when the parties have a good working relationship or when the dispute involves relatively minor issues. However, direct negotiation may not always be effective, particularly when the dispute is complex, or the parties have significant disagreements.

In some cases, parties may seek legal advice before engaging in direct negotiation, particularly if the dispute involves legal or contractual issues that are complex or unclear. Legal advice can help the parties to understand their legal rights and obligations and can help them to prepare a negotiating strategy that is more likely to be successful.

While it is possible for parties to negotiate a dispute without the assistance of a lawyer or an independent neutral, there are some potential risks to consider. For example, without a neutral third party to facilitate the negotiation, the parties may become entrenched in their positions or become unable to effectively communicate with each other. Additionally, if the negotiation is unsuccessful, the parties may be left with no other option but to pursue more formal dispute resolution mechanisms such as mediation, arbitration, or litigation.

How are mediators selected for an appointment? Are they usually legally qualified?
In the Netherlands, there is no specific regulatory body for mediators, and therefore, anyone can offer mediation services. However, various organizations, such as the Netherlands Mediation Institute (https://www.gecertificeerdemediators.nl/), the Association of Mediators in the Netherlands (VMN - https://www.vmn-notaris.nl), and the Mediatorsfederatie Nederland (MfN - https://mfnregister.nl), offer accreditation and certification for mediators.
When parties choose to engage in mediation, they can either select a mediator themselves or use a mediator recommended by an organization, such as the ones mentioned above. Generally, parties will look for a mediator with relevant experience and expertise in the subject matter of their dispute. Mediators may come from a variety of professions, including psychology, business, social work, and law, among others. Another reason why, in practice, parties tend to prefer arbitration to litigation is the specific expertise and/or industry knowledge of arbitrators. The parties may also consider factors such as the mediator's reputation, availability, and fees when selecting a mediator.
It is not a requirement for mediators to be legally qualified in the Netherlands, although some mediators may have a legal background. It is important to note that mediators are not allowed to provide legal advice to the parties during the mediation process. Therefore, parties may wish to obtain legal advice from their own lawyers outside of the mediation process.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
Facilitative mediation is a process in which the mediator assists the parties in reaching their own agreement, without providing any advice or recommendations on the outcome. The mediator helps the parties to communicate effectively, identify the issues, and generate options for resolving the dispute. The parties are responsible for making their own decisions and reaching their own agreement.

On the other hand, evaluative mediation is a process in which the mediator provides advice and recommendations to the parties on the outcome of the dispute. The mediator may offer opinions on the strengths and weaknesses of each party's case, propose settlement options, and encourage the parties to reach an agreement based on these recommendations.

In the Netherlands, both facilitative and evaluative mediation are used in practice, and mediators can employ a combination of both approaches, depending on the needs of the parties and the nature of the dispute. However, it is important to note that mediators must remain neutral and impartial throughout the process, regardless of whether they adopt a facilitative or evaluative approach.

How is a mediation settlement agreement enforceable?
In the Netherlands, a mediation settlement agreement is enforceable as a contract between the parties, in the same way as any other contract. Once the parties have reached a settlement agreement in mediation, the terms of the agreement should be put in writing and signed by the parties and the mediator.

If one party breaches the terms of the settlement agreement, the other party can seek enforcement through the courts.

However, in order to do so, the settlement agreement must meet certain legal requirements, such as clarity of terms, mutual agreement, and proper execution.

Under Dutch law, parties can also choose to have the settlement agreement made enforceable by a notary, which can help to streamline the enforcement process. Once a settlement agreement is made enforceable by a notary, it has the same legal force as a court judgment.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
In the Netherlands, several types of alternative dispute resolution (ADR) processes are commonly used, including mediation, arbitration, and binding advice.

Mediation is a popular ADR process in the Netherlands, and it is often used in a variety of disputes, including commercial, employment, family, and civil disputes. Mediation is considered a cost-effective and time-efficient way to resolve disputes, as it can often result in a quicker resolution than traditional litigation.

Arbitration is also commonly used in the Netherlands, particularly in commercial disputes. Arbitration is often preferred in international disputes because it offers a neutral forum and the flexibility to choose a language and the rules that govern the proceedings. Parties in arbitration can also choose their arbitrators, which can provide a degree of confidence in the impartiality of the decision-maker.

Binding opinion proceedings entail another form of ADR that is often used in the Netherlands, particularly in disputes involving technical or commercial matters. In binding advice, the parties agree to have a third-party expert make a binding decision on the dispute. The decision is binding on the parties, and they are required to comply with it.

The cost of arbitration versus mediation in the Netherlands can vary depending on the specific circumstances of the dispute and the particular arbitration or mediation process used. However, in general, mediation is often considered to be a less expensive and more time-efficient way of resolving disputes compared to arbitration. Mediation costs can vary depending on the mediator's fees, but generally, mediation is less expensive than arbitration.

For an estimate of arbitration costs, see: https://www.nai-nl.org/nl/zorgcontractering/kostenoverzicht/, and for mediation costs, see: https://mediator-wijzer.nl/mediator-kosten/.
Overall, the popularity of the different types of ADR processes in the Netherlands varies depending on the nature of the dispute, the preferences of the parties, and the specific circumstances of the case.

Should I mediate in your country? What are the pros and cons?

Whether to mediate a dispute in the Netherlands ultimately depends on the specific circumstances of the case and the preferences of the parties involved. However, there are several potential pros and cons to consider when deciding whether to mediate a dispute in the Netherlands.

Pros:

- Cost-effective: Mediation can often be a more cost-effective way to resolve a dispute than traditional litigation, as it typically involves lower legal fees and a shorter time frame.
- Confidentiality: Mediation is a confidential process, which can be beneficial for parties who wish to keep the details of their dispute private.
- Voluntary: Mediation is a voluntary process, and parties can choose whether or not to participate. This can help to foster a sense of cooperation and mutual respect between the parties.
- Flexibility: Mediation is a flexible process, and the parties have greater control over the outcome than they would in a court or arbitration proceeding.
- Creative solutions: Mediation allows for creative and innovative solutions that may not be available in a court or arbitration proceeding.

Cons:

- Not legally binding: Mediation agreements are not legally binding unless they are made enforceable by a notary. This means that one party could breach the terms of the agreement without facing legal consequences.
- Unpredictable outcomes: Because mediation relies on the parties reaching a voluntary agreement, the outcome can be unpredictable, and there is no guarantee of success.
- Limited discovery: Mediation does not involve the extensive discovery process that is available in a court or arbitration proceeding, which could make it more difficult for parties to fully understand the strengths and weaknesses of their case.
- No precedent-setting: Mediation does not create legal precedent, which means that the outcome of the mediation cannot be used as a basis for future disputes.

Overall, mediation can be a useful tool for resolving disputes in the Netherlands, but parties should carefully consider the potential pros and cons before deciding to pursue this option.

Should I arbitrate under the laws of your country? What are the pros and cons?

Pros:

- Neutral forum: The Netherlands is known for its neutral and independent judiciary, which can provide a fair and impartial forum for arbitration proceedings.
- Flexibility: Arbitration offers greater flexibility in terms of scheduling, location, and the rules that govern the proceedings, which can make it a more efficient and cost-effective way to resolve disputes.
- Privacy: Arbitration proceedings are generally confidential, which can be beneficial for parties who wish to keep the details of their dispute private.
- Expertise: Parties in arbitration can choose arbitrators who have specific expertise in the subject matter of the dispute, which can provide a degree of confidence in the quality of the decision-making.
- International recognition: The Netherlands is a signatory to the New York Convention, which means that arbitral awards rendered in the Netherlands are generally recognized and enforceable in other countries.

Cons:

- Cost: Arbitration can be more expensive than other forms of dispute resolution, particularly if the dispute is complex or involves multiple parties.
- Limited discovery: Arbitration does not involve the extensive discovery process that is available in a court proceeding, which could make it more difficult for parties to fully understand the strengths and weaknesses of their case.
- Limited appeals: The grounds for appealing an arbitral award are generally more limited than in a court proceeding, which could make it more difficult for parties to challenge an unfavorable decision.
- Lack of legal precedent: Arbitration does not create legal precedent, which means that the outcome of the arbitration cannot be used as a basis for future disputes.

Overall, arbitration under the laws of the Netherlands can be a useful tool for resolving disputes, particularly in the international context. However, parties should carefully consider the potential pros and cons before deciding to pursue this option.

POLAND

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
Mediation in Poland is voluntary, and this applies to civil, criminal, commercial, family and administrative cases. Parties who opt for mediation voluntarily agree to attempt to resolve their disputes by agreement through an independent mediator.

The Act of 10 September 2015 amending certain laws in connection with the promotion of amicable dispute resolution introduced into the Code of Civil Procedure an obligation for parties to include in the statement of claim information on attempts to resolve the dispute amicably or, if such attempts were not made, to include information on the reasons. Moreover, the possibility was introduced for the court to take into account, when determining the remuneration of the attorney, the efforts made by him/her to bring about an amicable resolution of the dispute, also before the filing of the statement of claim and the possibility to charge the party with the obligation to reimburse the costs caused by unjustified refusal to submit to mediation.

The court cannot force the parties to participate in ADR, it can at most refer the parties to mediation at any stage of the court proceedings, but even in this case the parties must agree. Also, the selected mediator does not have the right to compel the parties to mediate.

An example of legislation specifying situations where the court refers parties to mediation in certain cases is the Public Procurement Law.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g.
costs consequences)

As a general rule, as mediation is voluntary, the parties do not suffer negative consequences of refusing to submit to mediation. However, the court may, irrespective of the outcome of the case, impose an obligation on a party to reimburse costs arising from a manifestly unjustified refusal to submit to mediation. Moreover, the court may impose an obligation to reimburse costs in a higher proportion to
a party than the outcome of the case would dictate, or even to reimburse costs in full to a party who, in the course of the proceedings, without justification, fails to appear at a mediation session despite having previously agreed to mediation.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
In the practice of legal transactions, it is common for parties to use clauses in contracts concerning the obligation to resolve disputes amicably. This type of clause is used in contracts of various types. In the reality of trading, the parties do not feel bound by this obligation, however, due to the negative consequences of litigation for the Parties, they decide to negotiate before initiating legal proceedings. It is exceptionally rare that the parties do not take amicable action and this can only be dictated by factual circumstances indicating the pointlessness of such action.

The EU, arbitration is advisable unless the parties agree to a suitable applicable court and law for both. Mediation usually is inserted in the contracts as a previous step to litigation. The clauses are limited to the goodwill of the parties, as it is very easy for the parties to justify litigation/arbitration because negotiations have stalled.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
It is a common case that parties choose to negotiate without a lawyer or mediator. This is done in order to de-formalise the negotiations, which leads to greater flexibility for the parties to find a compromise. In addition, negotiations without the involvement of a lawyer or mediator are cheaper and quicker, as there is no need to wait for the availability of a mediator or lawyer.

However, in cases of particular legal complexity or high value of the subject matter of the dispute, the parties rarely decide to negotiate without a lawyer.

How are mediators selected for an appointment? Are they usually legally qualified?
In the case of out-of-court mediation, the choice of mediator depends on the provisions of the agreement concluded by the parties. The parties may choose the mediator, for example, from among the mediators mentioned on the mediation centre's list, which is a non-governmental organisation or a university. In a mediation before a court, on the other hand, the parties choose the mediator themselves or leave the choice to the court, which first selects the mediators from among the so-called permanent mediators. Lists of permanent mediators are maintained by the presidents of the district courts.

In criminal cases a mediator can be chosen only by the court or court registrar, and in pre-trial proceedings the public prosecutor or other authority conducting the proceedings. A general rule is that the mediator is chosen from the list of mediators kept by the presidents of the relevant district court. Only in exceptional cases the mediator in a criminal case may by appointed outside of the list.

Mediators are not required to have a legal background, although in practice many have such a background. Depending on the subject matter of the case, mediators may have a background in psychology, pedagogy, sociology, which is particularly appropriate in family cases.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
The role of a mediator is rather facilitative.
The mediator shall conduct the mediation using various methods aimed at an amicable settlement of the dispute, including assisting the parties in formulating settlement proposals or, with the agreement of the parties, may indicate ways of resolving the dispute which are not binding on the parties.
During the mediation procedure, the mediator supports the participants in the dispute in reaching an agreement and is responsible for the proper conduct of the procedure. The mediation directs the participants to solve their problems together. The mediator is not a judge or arbitrator who settles the dispute.
He or she is impartial and neutral in supporting the parties to reach a solution that is a win-win for them.

How is a mediation settlement agreement enforceable?
If a settlement is reached before a mediator on the basis of a mediation agreement, a party may request the court to approve such settlement by the court. The mediator shall then file the mediation report with the settlement agreement with the court that would have jurisdiction to hear the case under general or exclusive jurisdiction. Once approved by the court, the settlement shall have the legal force of a settlement concluded before the court.
If the settlement agreement is enforceable by way of execution, the court shall approve it by making it enforceable. Such a settlement, concluded before a mediator and approved by granting an enforceability clause, is an enforceable title.

The court will not approve the mediation settlement agreement if it is contrary to the law or principles of social co-existence or aims to circumvent the law, or if it is incomprehensible or contains contradictions.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
- mediation
- early neutral evaluation
- expert determination
- adjudication
- med arb (ie The parties agree to mediate and agree in advance if the dispute is not resolved they will arbitrate).
- Arbitration

The most commonly used types of ADR process are mediation and arbitration, whereas mediation in disputes regarding family matters and arbitration in commercial disputes.

Should I mediate in your country? What are the pros and cons?
Pros:
- Speed of proceedings,
- Generally, reduction of the costs of the proceedings (however video cons),

- The commencement of mediation proceedings suspends the limitation period for claims,
- Possibility for the parties to co-determine the selection of the mediator as a person of trust,
- Ensuring that the parties have a say in the final outcome of the dispute,
- Reducing formalities,
- Increasing the guarantee of removing the conflict permanently,
- In criminal cases, faster completion of criminal proceedings and consequently faster erasure of convictions.

Cons:
- Bilateral consent needed of the parties to the dispute,
- Lack of formal requirements for persons who are mediators - conducting mediation by persons who are not prepared for it practically but also substantively and, as a consequence, concluding an unlawful settlement,
- Lack of guarantee of success and thus resolution of the dispute, which may result in additional costs (e.g. having to terminate the dispute if mediation fails),
- Lack of enforcement power of the agreed solution,
- In the case of litigants who are public entities, risk of allegations of bias against them.

Should I arbitrate under the laws of your country? What are the pros and cons?
It depends on the case.
Arbitration can be particularly beneficial in cases:
- between international parties - for example, where the parties to a contract are from different countries, or where the contract is performed in more than one country,
- highly specialised or niche - on the basis of contracts or disputes concerning specialised industries. Judges in ordinary courts are unlikely to specialise in one type of case, while the arbitrator does not have to be a lawyer - it could be, for example, an engineer or other expert in the relevant field
- regarding employment contracts.

Pros:
- Speed of proceedings (complicated cases– usually 6 to 24 months, whereas in the common court can even be up to 10 or more years),
- Generally, reduction of the costs of the proceedings (however video cons),
- The commencement of arbitration proceedings interrupts the limitation period for claims,
- Possibility for the parties to co-determine the selection of the arbitrator as a person of trust and specific knowledge,
- Confidentiality of the proceedings.

Cons:
- It may cost more than common court proceedings, especially if the litigation value is quite substantial. Thus, it is advised to evaluate the cost of arbitration.
- In some cases it is more strict than common court – eg. in some artitration courts there is a limit of time for the oral statement,
- It may be more formal.

Thus it is advised to analyse each case individually and to consider pros and cons.

PORTUGAL

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
In 2006 and 2007 the Ministry of Justice, through GRAL (a cabinet created for alternative dispute resolution) created centres for mediation and conciliation to resolve family, labour and criminal disputes. The validity of the settlements obtained in these special mediation centres is recognised by court and enforceable, but parties still prefer to go to court.

In 2013 a new law on Civil and Commercial Mediation (Law 29/2013) entered into force, however courts or tribunals still cannot compel the parties to mediate or participate in an ADR process before commencing arbitration or litigation and any consent the party gives to participate in a mediation process may be revoked at any time. For example, with respect to consumer protection, the regime – Law no. 24/96, of 31 July - was amended by Law 63/2019, of 16 August, and since 15 September 2019, at the consumer's option, consumer disputes of low economic value (currently worth no more than € 5,000, which is the amount of the jurisdiction of the courts of 1st instance) will be subject to necessary mediation or arbitration. However if the parties do not appear at the mediation or fail to reach an agreement, the procedure just proceeds to the conciliation or trial stage.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
There are no consequences of not agreeing to mediate.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
In international contracts, especially with jurisdictions outside the EU, arbitration is advisable unless the parties agree to a suitable applicable court and law for both. Mediation usually is inserted in the contracts as a previous step to litigation. The clauses are limited to the goodwill of the parties, as it is very easy for the parties to justify litigation/arbitration because negotiations have stalled.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
No, usually in the beginning of a dispute lawyers tend to contact each other to try to open the doors for a possible mediation, between lawyers, that would actually be the indicated modus operandi according to the Law Society Deontology, unfortunately it is not always respected. Mediation in family disputes (divorce and exercise of parental responsibilities) has been the most successful, although according to official data only nearly 150 requests were presented in the first semester of 2014.

How are mediators selected for an appointment? Are they usually legally qualified?
In most cases lawyers act as mediators; for example in the justice of the peace mediators usually are, if not lawyers, at least law school graduates with mediation training. Furthermore, the mediator should be enrolled in a public mediation system or enrolled in the list of conflict mediators managed by the Ministry of Justice.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
Mediators tend to be evaluative, in order to find a common ground and sometimes even common sense. The mediator must indicate the legal solution for the matter and a practical solution that tends to bring the parties together.

How is a mediation settlement agreement enforceable?
In the justice of the peace it will be drafted as an agreement accredited by the judge of peace so it will have the value of a first instance sentence. The agreement reached by the parties during mediation. in the context of low-value consumer disputes, is also enforceable, without the need for judicial homologation. As for other extra judicial mediation,

i.e. done by lawyers, the agreement should be authenticated as a private document and signatures certified (lawyers can do this), thus in case of non-fulfilment it will be enforceable as an execution title.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
Mediation and arbitration are the most popular types of ADR, especially for smaller civil and commercial disputes. Arbitration before the ICC or other internationally recognised authorities is commonly used for disputes arising from international contracts concerning overseas investments or contracts with parties that are based in a country where the state judicial system does not guarantee a fair and swift dispute resolution.

Another type of Arbitration commonly used nowadays is Fiscal and Administrative Arbitration which was set out by the Portuguese Government to solve the lengthy procedures in Fisclal and Administrative Courts. By creating the Center for Fiscal and Administrative Arbitration (CAAD) with a fully electronic process and qualified arbitrators it has become in recent years one of the preferred dispute resolution method for these matters. Besides mediation and arbitration the most successful form of ADR is the justice of peace. Portugal has around 25 centres of justice of peace, under the supervision of the Ministry of Justice, that have jurisdiction on civil matters up to 15,000,00 Euros. The justice of the peace is useful in simple disputes, the decisions are enforceable and the final costs resulting from the process are fixed, only 70 Euros, and paid by the defeated party. In these special Courts mediation sessions with a professional mediator is compulsory before allowing the opposing parties to present their case to the justice of peace.

Should I mediate in your country? What are the pros and cons?
The pros:
- Mediation is recommended in Portugal, quality mediators and lawyers with lower legal fees than most of Europe.

The cons:
- Mediation agreements must have the involvement of a lawyer in order to become an enforceable title.

Should I arbitrate under the laws of your country? What are the pros and cons?
The pros:
- National and International Arbitration is recommended in Portugal. There are quality arbitrators for lower cost than average, very good territorial location and infrastructures, as well as good weather. Portugal has also the potential to become, inside Europe, a specialist for arbitration between companies situated in Portuguese- speaking language countries such as Angola, Mozambique, Brazil, Timor, Macau.

The cons:
- Lengthier process due to the fact that parties may abuse guarantees for the parties (service of papers for example if not received at the head office, legal representatives must be served afterwards) and extended time limits;
- Portuguese language.

SWEDEN

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GULLIKSSON

Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
The main rule is that it is a prerequisite to the court's or tribunal's ability to order mediation that neither party objects to mediation.

However, mediation is mandatory in some special legal relations and situations, for example in some situations in usufruct relations, tenancy and leasehold.

Certain kinds of claims, for example in labour disputes, have structured "pre-action protocols" which should be followed and which may include an obligation to negotiate before legal proceedings may be opened.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
No.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?

Such obligations are not common but exist in some contracts.
An obligation to negotiate or mediate is normally respected but is in practice not enforceable; however refusal to negotiate or mediate may be an obstacle to open legal proceedings.

Will parties frequently seek to negotiate a dispute without a lawyer or an independent neutral such as a mediator?
Not frequently.

How are mediators selected for an appointment? Are they usually legally qualified?
Before legal proceedings have commenced, often by recommendations from the parties' legal representatives. The mediator does not have to be legally qualified, but normally a judge or solicitor is appointed.

After legal proceedings have been opened by the court, normally a senior judge is appointed. A mediation clause included in the contract may refer to mediation rules which stipulate the appointment of mediator.

On behalf of the government, the Swedish Courts have compiled a list of people who have declared themselves willing to mediate in court in cases where the parties can settle the matter. These people are often legally qualified, but there are no requirements other than that the person has declared himself/herself willing to mediate in court.

Is the mediator purely facilitative or are they evaluative (i.e give a recommendation on the terms upon which the dispute should be resolved)?
Normally a mediator is evaluative, but it may vary from mediator to mediator.

How is a mediation settlement agreement enforceable?
If legal proceedings have commenced the court or arbitration tribunal can confirm the settlement agreement in an award. If legal proceedings not have been opened the court can according to rules in the Mediation Act confirm a settlement agreement and make it enforceable.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
Meditation with an appointed senior judge or solicitor is commonly used. It is often a judge at the district court who can use different methods in order to get the parties to reach an agreement.

In commercial disputes when the amount of dispute justify the costs for the arbitrators, arbitration is a common process. Arbitration is regarded to be quicker, the proceedings are quicker and the main rule is that the award can not be

appealed. The proceedings are private and the parties can appoint arbitrators in whom they trust.

Also, the Arbitration Institute of the Stockholm Chamber of Commerce, SCC, www.sccinstitute.com , has med arb in one of the recommended model clauses for dispute resolution.

Should I mediate in your country? What are the pros and cons?

The pros

- The cost benefits and that the parties can retain control over the process and the outcome.

The cons

- Perhaps the Swedish language. However, Sweden is a very international country and almost all Swedes speak and understand English.

Should I arbitrate under the laws of your country? What are the pros and cons?

A modern and effective legal system, and compared with several countries a quick, consistent and predictable procedure. Sweden has a long tradition as a place for international arbitration conducted in English and as a place for international investment disputes with parties without any connection with Sweden.

SWITZERLAND

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Is mediation mandatory for any types of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?

No, mediation is voluntary for all types of claims, unless the parties have expressly agreed to submit the dispute to mediation. Mediation is certainly not mandatory for any type of claim. It can only be mandatory if it is expressly provided by the Parties' common agreement.

The Court might indeed, at one point, encourage the Parties to try to settle amicably their dispute by way of mediation or arbitration, but it has no power to compel them.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)

No, there are absolutely no consequences as no party will be found failing to comply with its obligations.
Yet, when made compulsory by contract, in certain exceptional situations, if a mediation has been agreed, the Court might refuse to rule the dispute before the parties have submitted their dispute to mediation or indeed possibly to dismiss the case.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?

Yes, it is common to include such an obligation to negotiate or to mediate. If the parties fail to undertake mediation or negotiation, while obligated, they run the risk of seeing their claims being dismissed by the court.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?

No, they usually rely on lawyers to negotiate or mediate a dispute.

How are mediators selected for an appointment? Are they usually legally qualified?
Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?

Usually, Mediators are not only facilitators but they are often also entitled, with the agreement of the parties, to issue recommendations.

How is a mediation settlement agreement enforceable?

A mediation settlement is enforceable if included in an Arbitration award or in a Court judgement.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?

Arbitration, in Switzerland, is certainly the most commonly used ADR process. Yet, in the financial sector, mediation can be imposed upon banks and financial firms which have the obligation to be registered with a mediation institution.

Should I mediate in your country?

Yes, we have now acquired expertise in mediation.

What are the pros and cons?

Mediators have often very good credentials. Yet, there is a more long-standing tradition of mediation in Anglo-Saxon countries. Much depends on the mediator.

If mediation fails, then parties will have endured additional costs in vain.

Should I arbitrate under the laws of your country? What are the pros and cons?

As arbitration in Switzerland is closely related to its history of neutrality, and as numerous languages are spoken, there is a longstanding tradition of arbitration.

Swiss rules of arbitration very often govern international arbitration and you can certainly select with confidence experienced arbitrators, with good knowledge of international law, in Geneva. The same is true for the lawyers participating in the arbitration. Swiss arbitration awards are recognized and enforced internationally.

Yet, if the value at stake is low, it might be cheaper for a claimant to file its claim before a regular Court, particularly if the arbitration clause provides for three arbitrators and not only for one single arbitrator.

UNITED STATES

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Because the United States has a federal system, ADR is governed both by federal and state law.

Federal law governs arbitration in the Federal Arbitration Act (FAA). Chapter 1 of the FAA addresses domestic arbitration (9 U.S.C. 1-16), and Chapter 2 governs international arbitration by incorporating the provisions of the New York Convention (9 U.S.C. 201-208). The case law of the U.S. Supreme Court strongly supports arbitration, and bars states from restricting it unduly. Nevertheless, in recent years federal law has begun to impose limits on forced arbitration in some areas, such as sexual assault, and the practice of including mandatory arbitration clauses in non-negotiable consumer contracts of adhesion (such as with credit card companies, mobile phone operators, etc.) has drawn increasing criticism and scrutiny.

With regard to mediation, however, practices vary widely among the 50 states. The following information is provided as an example, based on mediation in the State of New Jersey:

Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?

A trial judge may require the parties to attend an initial two-hour mediation session at any time after the filing of a civil complaint. In addition, the parties to an action may request an order of referral to mediation and may either select the mediator or request the Court to designate a mediator from a court-approved roster.

In practice, judges often conduct "intensive settlement conferences" to try to settle cases. If the parties agree, such conferences may take place before the judge who will try the case if mediation fails. Mediation before the judge who will try the case increases the pressure on the parties to settle, but some trial judges consider it to create an appearance of impropriety and prefer to have such conferences conducted before other judges.

In family law cases, all complaints involving custody or parenting time are subject to mandatory mediation for resolution in the child's best interests. In addition, every family law case is listed to appear before an Early Settlement Panel of three experienced volunteer attorneys, who receive submissions from the parties, conduct a remote session with the parties and counsel, and then issue oral recommendations to settle the case. The failure of a party to participate in the ESP program may result in the assessment of counsel fees or the dismissal of the non-cooperating party's pleadings.

If a family law case is not resolved through the ESP process, the Court refers the parties to mandatory economic mediation with a mediator from a roster of qualified mediators.

In landlord-tenant cases and small claims, the court provides a small claims settlement program conducted by judicial law clerks (young recent law graduates who are employed to assist judges for one- to two-year terms) who have been trained in complementary dispute resolution techniques and other lawyers trained as mediators, to serve in this instance as trained settlors, not mediators. Cases that are not settled through this process generally are tried the same day.

There are special provisions for mediation of residential mortgage foreclosure cases. This type of mediation explores whether an alternative solution is available to the parties, short of foreclosure and eviction. This may include a loan modification agreement, a repayment plan or some other acceptable form of home retention resolution, or a non-retention option such as a deed in lieu of foreclosure, a short sale or a market sale. The parties are not required to accept an alternative resolution, but mediation may provide an opportunity for the homeowner to continue to reside in the mortgaged premises and may afford the lender an opportunity to avoid foreclosure costs and carrying charges, and to reduce the number of non-performing loans in its portfolio.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)

Yes, in some cases (see above).

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts?
If so, are those clauses respected and enforceable?

This does happen in some contracts, but the extent to which they are enforced can vary.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
It is common for trial counsel to try to negotiate with each other, without a neutral, but this rarely happens before the eve of trial. As trial approaches, judges may become involved in the discussion and may send the parties to a neutral if resolution seems possible.

How are mediators selected for an appointment? Are they usually legally qualified?
Mediators in court-ordered mediation are selected either by the parties, or by the court from a court-approved roster of trained mediators (usually lawyers).

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?

This depends on the circumstances. In fact, New Jersey has a procedure in the court rules that is entitled "Arbitration of Certain Civil Actions" in which, despite the use of the term "arbitration," a party who is dissatisfied with the award may, within 30 days of the arbitral award, file a notice of rejection of the award and a demand for trial de novo. Trial de novo is granted as of right, upon payment of a modest fee, thereby effectively converting the "arbitration" into an unsuccessful meditation. Alternatively, the parties may submit a post-arbitration consent order to the Court in which they agree to settle the dispute on terms different from those in the award, or a party may simply file a motion for confirmation of the award and entry of judgment thereon.

How is a mediation settlement agreement enforceable?
Such an agreement is enforceable in the same manner as any other settlement agreement. Most often, it is embodied in a Stipulation and Order, or a Consent Order, which is a court order that is enforceable in the same way as any other court order or judgment, most often by a motion to hold the non-compliant party in contempt of court. Execution on the non-compliant party's property is also possible.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
You might consider:
a. mediation
b. early neutral evaluation
c. expert determination
d. adjudication
e. med arb (ie The parties agree to mediate and agree in advance if the dispute is not resolved they will arbitrate)
f. Arbitration

Depending on the state and the subject matter, all of these methods are used in the United States.

Should I mediate in your country? What are the pros and cons?

Mediation is increasingly encouraged and popular in the United States. The principal downside is that it can be viewed by some as a waste of time and money because the outcome often is not enforceable, and the parties may be required to spend time and money to try the cases even after having gone to the effort and expense of an unsucessful mediation.

Should I arbitrate under the laws of your country? What are the pros and cons?
Arbitration of commercial disputes is widespread, and there is an increasing number of private arbitration providers (the American Arbitration Association, JAMS, the International Chamber of Commerce and others) who provide the service and a choice of arbitrator(s). The principal advantage of arbitration is that it is confidential, whereas the court system in the United States is presumptively public and documents filed in court proceedings are open to examination by the press and the public. Depending on the location of the dispute and the burdens on the local court system, arbitration may be viewed as a faster route to resolution than court proceedings. The disadvantage of arbitration is that arbitrators sometimes simply resolve the dispute midway between the respective positions of the parties, which can be unsatisfactory to both sides. Finally, arbitral awards generally are not subject to appeal on their merits, but only to very limited appellate review for procedural errors. This also can be unsatisfactory to the parties.

UKRAINE

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Is mediation mandatory for any type of claim in your country before commencing arbitration or litigation? Can the court or tribunal compel the parties to participate in an ADR process?
No type of alternative dispute resolution, including mediation, is mandatory in Ukraine. The court may suggest the parties to settle the dispute amicably by way of mediation or arbitration however it has no powers to compel the parties.

If it is not mandatory, are there any consequences of not agreeing to mediate? (e.g. costs consequences)
There are no legal consequences for not agreeing to mediate. Under Ukrainian law, participation in mediation is voluntary. A party's participation in mediation may not be considered an admission of guilt, claim or waiver of claim by that party. However, under Ukrainian procedural law, in the event that the parties reach an agreement on the conclusion of a settlement agreement, the claimant's refusal of the claim or the recognition of the claim by the defendant as a result of the mediation, the court returns 60 percent of the court fee paid during the filing of the claim, appeal or cassation complaint.

Is it common to include obligations to negotiate and mediate before commencing arbitration or litigation in commercial contracts? If so, are those clauses respected and enforceable?
Many boilerplate contracts include multi-tier dispute resolution clauses suggesting a negotiation phase before referring the matter to litigation or arbitration. Mediation is agreed on extremely rare occasions. In one of the cases the Supreme Court enforced the obligation to negotiate a dispute and refused to recognize the arbitration award on the grounds that the claiming party made no effort to settle the dispute by way of negotiations.

Will parties frequently seek to negotiate a dispute directly without a lawyer or an independent neutral such as a mediator?
Despite the adoption of the Law of Ukraine "On Mediation" at the end of 2021, the Ukrainian legal environment has not yet got used to mediation as a type of alternative dispute resolution, so more frequently the parties enter into negotiations and, should the latter fail, proceed to arbitration/litigation.

How are mediators selected for an appointment? Are they usually legally qualified?
Mediation parties independently choose the mediator and / or entity that ensures mediation. . Under Ukrainian law, a mediator can be an individual who has undergone basic mediator training in Ukraine or abroad. Many of the Ukrainian professional mediators are legally qualified however there are a number of mediators who are not.

Is the mediator purely facilitative or are they evaluative (i.e. give a recommendation on the terms upon which the dispute should be resolved)?
The mediators usually take a proactive position and apart from facilitating the discussion between the parties may provide advice and recommendations to the parties to the mediation that would require mutual concessions for the sake of settlement of the dispute, but the decision is made exclusively by the parties to the mediation.

How is a mediation settlement agreement enforceable?
A settlement agreement between the parties is binding as any other type of agreement. Should either of the parties fail to abide by the terms of such agreement it can be enforced via litigation/arbitration proceedings subject to the appropriate mechanism contained in the settlement agreement. Alternatively, the parties may immediately after the conclusion of the settlement agreement apply to the court so that it is approved as a judgment on agreed terms.

What types of ADR process are commonly used? Is a particular process popular? If so, for which types of dispute?
Arbitration is the most popular alternative method of dispute resolution in Ukraine. The parties take recourse to arbitration in various areas. Other types of ADR are rarely used.

Should I mediate in your country? What are the pros and cons?

Pros:

- low costs of mediation;
- swift resolution of disputes.

Cons:

- the opposing party may use mediation as dilatory tactics;
- in business community mediation is poorly distinguished from negotiations and thus treated as ineffective.

Should I arbitrate under the laws of your country? What are the pros and cons?

Pros:

- Ukrainian law "On International Commercial Arbitration" is largely based on the relevant UNCITRAL Model Law, therefore it sets an arbitration-friendly legal framework. The arbitration proceedings at the Ukrainian International Commercial Arbitration Court usually take from three to six months to complete and the arbitration costs are substantially lower than in other jurisdictions. The state courts have recently changed their approach in favour of recognition and enforcement of interim measures issued by an arbitration tribunal.

Cons:

- The possibility to choose an arbitrator only from the ICAC recommended list;
- Absence of an emergency arbitrator procedure.