

Arnold Ingen-Housz (Editor)

ADR IN BUSINESS

PRACTICE AND
ISSUES ACROSS
COUNTRIES AND
CULTURES

VOLUME II



Wolters Kluwer
Law & Business

Editor's Preface

In the wake of its title, the first edition of this new book on Amicable Dispute Resolution (ADR)¹ gave rise to similar reactions from the Publisher and a number of readers: they pushed for 'more'.

Kluwer Law International wanted *ADR across Countries and Cultures* to be spread over the five continents, while readers called for much more on *ADR Practice and Issues*. As a result, this second volume offers extensive learned analysis and experience as well as broad geographical coverage.

When it comes to genuine out-of-court Dispute 'Resolution', each of the 'A' adjectives figuring in this book – Amicable, Alternative and Appropriate – looks improper because eventually there is no enforcement without judicial assistance. Subject to the angle from which out-of-court action is regarded, each of the A's represents a specific approach of conflict management. 'Appropriate' DR points to holistic party autonomy, 'Alternative' DR is exclusive of traditional litigation² and pure 'Amicable' DR (i.e. non-hybrid) simply seeks to settle the dispute.

The feedback generated by the first edition of this book gave direction to extending this second volume in the following areas:

- examining worldwide business needs for efficient DR solutions;
- increasing discussion of the general background and selected related subjects;
- focusing on practice and experiences;
- no 'handbook' approach of ADR techniques and the neutral's role;
- presenting perspectives offered by ADR hybrids;
- discussing transcontinental approaches of ADR regulation and practice.

1. 'ADR in Business, Practice and Issues across Countries and Cultures' – J.C. Goldsmith, G.H. Pointon and A. Ingen-Housz (eds), Kluwer Law International 2006

2. According to the European acceptance of the ADR acronym: exclusive of litigation and arbitration

Editor's Preface

As a rapidly developing practice around the world, ADR calls for an ongoing deployment of information, ideas and propositions, the aim always being to assist the business community in overcoming relational differences in a manageable way. Therefore this book may be styled a collection of intertwined but variegated essays or, in French, 'Mélanges'.

By design, no preliminary cross-confrontation of analyses and opinions among the individual authors has been organized. For the same reason, no cross-references are included in this book, except on the initiative of the contributors.

I wish to thank all of the chapter authors for their generous dedication to the preparation of this book.

The release of this second volume of *ADR in Business . . .* ' offers an opportunity to pay tribute to two personalities who played a significant role in the opening of the International Chamber of Commerce (ICC) to modern ADR. The first edition of this book was indeed sequential to the promulgation of the ICC ADR Rules in 2001. Jean Claude Goldsmith, always sensitive to future developments and still active on this front, had launched and as chairman of an ICC Forum persistently promoted – much beyond the duality of resolving disputes through litigation or arbitration – the idea of a spectrum of amicable settlement techniques. The then nearly eighty-year-old Optional Conciliation Rules were accordingly replaced under the late Robert Briner's chairmanship of the ICC International Court of Arbitration. In his foreword to the first edition of this book, Dr Briner emphasized the importance of looking at ADR on its own terms rather than as a substitute to traditional dispute resolution mechanisms. How right he was.

Beyond its numerous learned essays, this volume bears testimony to the growing worldwide role of ADR in business relations. Part V offers a wealth of information and experience, built up in such ADR pioneering continents as Australia and North America or emerging from old origins in Asia and Africa, as well as proof of Latin America's dynamic alignment and, finally, a chapter on ADR harmonization in the European Union launched under the device of 'access to justice'.

Justice for disputes or simply solutions to problems – here is a fascinating field of investigation and practice.

Paris – La Défense, November 2010

Arnold Ingen-Housz
Attorney at Law

Table of Contents

Editor's Preface	xxiii
Part I	
When Business Meets Conflict	1
Chapter 1	
ADR and Arbitration	3
<i>Pierre Tercier</i>	
1. Numerous Methods	4
1.1. A Few Truisms	4
1.2. A Few Lessons	6
2. Varied Solutions	7
2.1. A Few Ways of Presenting Them	7
2.2. A Few Consequences	9
3. Complementary Solutions	9
3.1. A Few Suggestions	9
3.2. A Few Consequences	11
Chapter 2	
Reasons for Choosing Alternative Dispute Resolution	13
<i>Jean François Guillemin</i>	
1. Introduction	13
2. A Choice Based on an In-Depth Assessment of the Chances of the ADR Procedure Being Successful	16
2.1. Management Involvement	17
2.2. Audit of the Contractual/Conflictual Position	18

Table of Contents

2.3.	Advantages and Disadvantages of ADR from the Position of Plaintiff or Defendant	19
2.4.	Assessment of Subjective Factors	19
2.5.	Act or Wait?	20
2.6.	Assessment of ADR's Ability to Bring Something New	21
2.7.	Taking the Initial Steps	22
2.8.	Is the Business Climate – Growth or Crisis – a Factor to Consider?	23
3.	A Choice Inspired by the Nature of ADR	24
3.1.	Reasons to Do with the Occasional Mandatory or Quasi-Mandatory Nature of ADR	25
3.2.	Reasons to Do with Rejecting Litigation or Arbitration	25
3.3.	Reasons to Do with Rejection of Class Actions	28
3.4.	Reasons to Do with the Existence of Litigation or Arbitration	30
3.5.	Reasons to Do with the Nature of the Dispute	31
3.6.	Reasons to Do with Confidentiality	31
3.7.	Reasons to Do with the Absence of Dispute or Desire to Avoid a Dispute Arising	32
3.8.	Reasons to Do with the Complementarities between Expert Determination and ADR	33
3.9.	Reasons for Not Choosing ADR	34
3.10.	Should the Contract Contain An ADR Clause?	35
4.	A Choice Inspired by the Nature of the Contract	36
4.1.	Reasons to Do with the Parties Themselves	37
4.2.	Reasons to Do with the Formation or Drafting of the Contract	38
4.3.	Reasons to Do with the Subject Matter of the Contract	39
4.4.	Reasons to Do with Performance or Non-performance of the Contract	40
4.5.	Reasons to Do with the Law Applicable to the Contract	42
4.6.	Reasons to Do with the Context Surrounding the Contract	42
4.7.	Reasons to Do with the Size of Certain Contracts or a Project Financing Arrangement	43
5.	Conclusion	45

Chapter 3

Making Mediation Mainstream 49

Patrick Deane, Wolf von Kumberg, Michael Leathes, Deborah Masucci, Michael McIlwrath, Leslie Mooyaart and Bruce Whitney, with a professional's perspective by Annette van Riemsdijk

1.	Introduction	49
2.	Toward Professionalization	50
3.	User Contribution	51
4.	Mediator Contribution	52
5.	Provider Contribution	53

6.	Trainer Contribution	53
7.	Educator Contribution	54
8.	Arbitrator Contribution	54
9.	Governmental Contribution	55
10.	The Case for the International Mediation Institute	55
11.	IMI Certified Mediator Profiles	57
12.	Beyond Certification: IMI's Wider Mission	57
13.	Conclusion	58

Appendix: An International Mediator Perspective **60**

Annette M. van Riemsdijk

1.	Introduction	60
2.	Become IMI Certified	61
3.	Become a Qualifying Assessment Programme	62
4.	Authenticate Basic Training	62
5.	Encourage Shadow Mediation Schemes	63
6.	Develop Mediation Representation Skills	63
7.	Promote Cross-Field Mediation	63
8.	Deliver Cross-Cultural Skills	64
9.	Conclusion	64

Chapter 4

Mediation as Management Tool in Corporate Governance **67**

A. Jan A. J. Eijsbouts

1.	Introduction	68
2.	Corporate Governance in Risk and Conflict Management	68
3.	ADR and Mediation in Comparison with Adjudication in a Corporate Governance 'in Control' Perspective	71
3.1.	Conceptual Points of View	71
3.1.1.	On Adjudication	71
3.1.2.	On ADR	72
3.2.	A Closer Look at the Competitive Edge of Mediation in Corporate Governance	72
3.3.	CSR and in Particular Human Rights as New Areas for Mediation	75
3.4.	ADR, Mediation and 'in Control'	76
4.	ADR as a Key Tool in Integral Conflict Management: The Akzo Nobel Experience	77
4.1.	Introduction	77
4.2.	The Ingredients of a Successful Conflict-Management System	78
4.2.1.	Knowledge	78
4.2.2.	Analysis of the Risk Profile of the Company and Proactive Policies	78

Table of Contents

4.2.3.	Proactive Conflict Management	79
4.2.4.	Handling of the Conflict	79
5.	Conclusion	80

Chapter 5

Moving beyond ‘Just’ a Deal, a Bad Deal or No Deal	81
<i>Manon A. Schonewille and Kenneth H. Fox</i>	

1.	Introduction	82
2.	Just Any Deal, Bad Deal or No Deal? That’s the Question	84
2.1.	The Inevitability of Suboptimal Deals in the Real World	84
2.1.1.	Negotiator, Professional Capacity: Jack-of-All-Trades	84
2.1.2.	Efficient versus Suboptimal Outcomes	85
2.2.	Dealing with Your Brain	86
2.2.1.	Attribution Errors, Fixed Pies, Reactive Devaluation, Overconfidence and Other Inconveniences	86
2.2.2.	Irrationality: We Cannot Help Ourselves, Can We?	87
2.3.	Rethinking Negotiation 1.0	88
3.	Deal-Facilitation: Mediation without a Dispute (or Negotiation with a Mediator)	90
3.1.	Terminology	90
3.2.	Classifications of Deal-Facilitation Processes	91
3.2.1.	Deal-Building Facilitation	92
3.2.2.	Deal-Ending Facilitation	95
3.2.3.	Combination	97
3.3.	The Role and Tasks of a Deal-Facilitator	98
3.3.1.	Overview Role and Tasks of a Deal Facilitator, the User’s Perspective	99
3.3.2.	Checklist Preparation for Deal Facilitation	100
4.	In What Types of Negotiation Can a Deal-Facilitator Add Most Value?	103
4.1.	Characteristics of a Complex Negotiation Process	103
4.2.	Monopolistic Markets versus Competitive Business Markets	104
5.	Deal Facilitation, Why Would You (Not)?	105
5.1.	Potential Benefits of Employing a Deal-Facilitator	105
5.2.	Potential Disadvantages of Employing a Deal-Facilitator	106
6.	Deal-Maker, Deal-facilitator and Dispute Mediator: What’s the Difference?	106
6.1.	The General Difference between Dispute Mediation and Deal Facilitation	106
6.2.	Deal-Maker, Negotiation Consultant, Deal-Facilitator and Mediator	107
7.	Toolkit Making and Sustaining a Deal vs. Dispute Resolution	110
8.	Ready, Set . . . and Where Do We Go Next?	113
	Bibliography	113

Part II

**Amicable Dispute Resolution on the Judicial Map and Its Legal,
Institutional and Functional Framework** **117**

Chapter 6

**The Importance of Context in Comparing the Worldwide
Institutionalization of Court-Connected Mediation** **119**

Nancy A. Welsh

1. Introduction 119
2. Court-Connected Mediation in the United States 122
3. Court-Connected Mediation in the Netherlands 124
4. Comparing the Context of Court-Connected Mediation in the
United States and the Netherlands 127
5. Considering Developments in Other Parts of the World 130
6. Conclusion: The Importance of Being Clear About the Goal
of Court-Connected Mediation 132

Chapter 7

The Roles of Dispute Settlement and ODR **135**

Thomas Schultz

1. Sixty Million Cases a Year and Counting 135
2. A Standard Typology 137
3. Autonomous Legal Systems under the Radar 137
4. Three Roles of Dispute Resolution 139
5. Owen Fiss's Distinction 140
 - 5.1. Resolving Disputes 142
 - 5.2. Justice 146
6. Further Distinctions 147
 - 6.1. Satisfaction of the Parties to the Instant Case 147
 - 6.2. The Rule of Law 151
 - 6.3. The Promotion of Substantive Societal Values 154

Chapter 8

Legal Issues Raised by ADR **157**

Charles Jarrosson

1. Introduction 157
2. Choice by the Parties of an ADR Process 160
3. Commencement and Conduct of an ADR Procedure 163
 - 3.1. What Is the Extent of the Parties' Obligations when
They Agree to Resort to ADR? 163
 - 3.1.1. The Various Types of Obligations 163
 - 3.1.2. Characteristics Shared by All ADR Processes 169
 - 3.2. Rules Concerning the Neutral 171

Table of Contents

3.3.	The Question of Confidentiality	177
4.	The end of the ADR proceedings	179
4.1.	Failure	179
4.2.	The Settlement Agreement	180
Chapter 9		
Mediation Privilege and Confidentiality and the EU Directive		183
<i>Michel Kallipetis</i>		
1.	Overview	183
2.	What Is Meant by Mediation Confidentiality or Privilege?	184
3.	The English Courts' Approach to Mediation Confidentiality	186
4.	The Approach to Mediation Confidentiality by Others	191
4.1.	The United States of America	191
4.2.	The Uniform Mediation Act	193
4.3.	Australia	196
4.4.	Canada	199
4.5.	Hong Kong	201
4.6.	New Zealand	202
5.	The EU Directive	205
6.	Conclusion	208
Chapter 10		
Basic Business Issues of Mediation Centres		211
<i>Graham Massie</i>		
1.	Introduction	211
2.	Taxonomy of ADR Provider Organizations	212
2.1.	Nature of Services/Mission	212
2.2.	Relationships with Neutrals	213
2.3.	Business Model Issues	215
3.	Principles for ADR Provider Organizations	217
3.1.	Quality and Competence	217
3.2.	Information Regarding Services and Operations	219
3.3.	Fairness and Impartiality	220
3.4.	Accessibility of Services	220
3.5.	Disclosure of Conflicts of Interest	221
3.6.	Complaint and Grievance Mechanisms	222
3.7.	Ethical Guidelines	223
3.8.	False or Misleading Communications	226
3.9.	Confidentiality	227
3.11.	Additions	228
4.	Differing Roles for Mediation Centres	229
4.1.	Pioneer	229
4.2.	Promoter	231

4.3. Player	231
4.4. The Future	232
5. Conclusion: The Case for Mediation Centres	233

Chapter 11

ADR under the ICC ADR Rules	235
<i>Peter M. Wolrich</i>	

1. Introduction	235
2. Analysis of the ICC ADR Rules	237
2.1. The Suggested ICC ADR Clauses	237
2.2. Scope of the ICC ADR Rules (Article 1 of the ADR Rules)	238
2.3. Commencement of ICC ADR Proceedings (Article 2 of the ADR Rules)	239
2.4. Selection of the Neutral (Article 3 of the ADR Rules)	240
2.5. Fees and Costs (Article 4 of the ADR Rules)	242
2.6. Conduct of the ADR Procedure (Article 5 of the ADR Rules)	243
2.7. Termination of the ADR Proceedings (Article 6 of the ADR Rules)	246
2.8. Confidentiality (Article 7 of the ADR Rules)	247
3. ADR and Enforceability	248
3.1. Enforceability May Not Be An Issue	248
3.2. Enforceability through an Award by Consent	248
3.3. Enforceability through the Res Judicata Effect of a Settlement Agreement	249
3.4. Enforceability of the Settlement Agreement as a Contract	249
4. Comparison of the ADR Rules with Other ICC Rules	249
4.1. ICC ADR Rules and ICC Rules of Arbitration	249
4.2. ICC ADR Rules and ICC Rules of Expertise	250
4.3. ICC ADR Rules and ICC Dispute Board Rules	251
5. Conclusion	253

Chapter 12

ICC's ADR Rules 2001–2010: Current Practices, Case Examples and Lessons Learned	255
<i>Hannah Tümpel and Calliope Sudborough</i>	

1. Introduction: ICC ADR Rules 2001–2010	255
2. ADR within the Various ICC Dispute Resolution Services: An Institutional Overview	257
2.1. Dispute Resolution at the ICC: Rules and Departments	257
2.2. The Relationship of the Court and the ICC Dispute Resolution Services	258
3. Cases Filed under the ADR Rules from 2001–2010: A Statistical Overview	258

Table of Contents

3.1.	Parties' Origin	259
3.2.	Corporate Parties and State Parties	259
3.3.	Complexity of the Cases	259
3.4.	Economic Sectors of Disputes	259
3.5.	Neutrals	260
3.6.	Designation and Appointment of Neutrals	260
3.7.	Settlement Techniques Used	260
3.8.	Amounts in Dispute	260
3.9.	Average Costs and Length	260
3.10.	Role of Counsel	261
4.	How Are ADR Procedures Commenced: Articles 2(A) and 2(B) of the ADR Rules	261
5.	The Clauses on Which ADR Cases Are Based	262
5.1.	Use of Clauses	262
5.2.	Expiration Mechanisms	262
5.3.	Escalation Clauses	263
5.4.	Non-obligatory ADR Clauses	264
6.	Flexibility and Procedural Efficiency	264
7.	Finding the Right Neutral	266
7.1.	How Does ICC Find the Right Neutral for Each Case?	266
7.2.	Which Qualifications Does the Neutral Need?	266
7.3.	The Neutral's Independence	268
7.4.	Objecting to a Neutral	268
7.5.	List of Neutrals	268
7.6.	Multiple Neutrals	269
8.	The 'Minimum Requirement' Foreseen by Article 5(1)	269
9.	Administrative Support by the ADR Secretariat	270
10.	Combination of ADR and Other (ICC) Dispute Resolution Procedures	273
10.1.	Combination with (ICC) Arbitration	273
10.2.	Combination with ICC Expertise	274
11.	How to Become a Neutral in an ICC ADR Proceeding	274
12.	A Look Ahead: ADR 2010–2020	275

Part III

Practice and Experiences	277
---------------------------------	------------

Chapter 13

How International Law Firms Might Approach the Subject of ADR with Their Clients	279
---	------------

Denis Brock and Rebecca Pither

1.	Introduction	279
2.	Recommending ADR Clauses in Contracts	280
2.1.	Client Opinion of ADR	280
2.2.	Is an ADR Clause Appropriate?	281
2.3.	International Considerations	282

2.4.	Validity of the Clause	283
2.5.	Structure of an ADR Clause	283
2.6.	Legal Order	285
2.7.	Summary	285
3.	Proposing ADR as a Dispute Emerges	286
3.1.	Potential Exposure of Client Weakness	287
3.2.	Other Tactical Factors	288
4.	ADR within Litigation	289
5.	Conclusion	291

Chapter 14

Mediation Representation: Representing Clients Anywhere **293**

Harold Abramson

1.	Introduction	293
2.	The Need for a Mediation Representation Framework	294
3.	Introduce a Triangular Framework	296
4.	Introduce Local Practices (Cultural and Strategic) into the Framework	297
5.	Negotiation	299
6.	Mediator Assistance	302
7.	Mediation Representation Plan	305
7.1.	Interests	306
7.2.	Impediments	307
7.3.	Information	308
8.	Key Junctures	310
9.	Conclusion	312

Chapter 15

The Art of Blending Arbitration and Other ADR Methods: Some Examples from International Practice **313**

Michael E. Schneider

1.	Introduction: Blending of Methods as Part of the Arbitrators Dispute Settlement Mission	313
2.	Negotiated Solutions for Procedural Controversies	314
3.	Leading the Parties to Settlement on the Substance of the Dispute	316
4.	Delegating Settlement Procedures	319
5.	Compelling Recommendations	323

Chapter 16

Profile of the Neutral in International Business **327**

Paul A. G  linas

1.	Introduction	327
2.	The International Neutral	329

Table of Contents

3.	Getting Appointed	331
4.	Practical Examples	333
5.	Summary	335

Part IV

Hybrids and Dispute Boards **337**

Chapter 17

Appropriate Dispute Resolution (ADR): The Spectrum of Hybrid Techniques Available to the Parties **339**

Jeremy Lack

1.	Introduction: Consumer Choice	339
2.	The Iceberg of Conflict and the Benefits of Hybrid Processes	341
3.	Designing a Process: Conflict Escalation and Developing a Holistic ADR Strategy	345
4.	Mixing and Matching ADR Tools and the Two Key Axes: Process versus Substance	350
5.	Designing Mixed Processes: Sequential, Parallel or Hybrid ADR Processes	357
6.	Special Considerations When Moving Around a Riskin Grid (Swapping Hats)	373
7.	Conclusion	379

Chapter 18

Combinations and Permutations of Arbitration and Mediation: Issues and Solutions **381**

Edna Sussman

1.	Introduction	381
2.	Developing an Effective Med-Arb/ Arb-Med Process	383
2.1.	Issues and Solutions for Same-Neutral Mediator and Arbitrator	384
2.2.	US Case Law: Can Consent Overcome Later Challenges?	387
2.3.	Importance of Selecting the Right Neutral	390
3.	Mediated Settlement Agreements as Arbitral Awards Under the New York Convention	391
3.1.	The Need for an Enforcement Mechanism	392
3.2.	Avenues for Enforcement	392
3.3.	Entry of an Arbitration Award Based on Mediation Settlement Agreements	394

3.4. Arbitral Awards Based on Party Agreement under the New York Convention	395
4. Conclusion	398

Chapter 19

ICC Dispute Board Rules: Status and Perspectives of a Key Contribution to the Prevention of Disputes **399**

Pierre M. Genton

1. Challenges in the Business Context	399
2. The Dispute Board Approach	403
3. ICC DB Standard Clauses	404
4. Main Features of the ICC DB Rules (2004)	405
5. Key Decisions to Be Made by the Parties	408
5.1. Decision Regarding the Standard Dispute Clause	408
5.2. Decision Regarding the Selection of the DB Option	408
5.3. Considerations Regarding the Examination of the Decision by the ICC DB Centre	410
5.4. Decision Regarding the Selection of the DB Members	410
5.5. Decision Regarding the Type of Referral to the DB	412
6. New Trends in DB Practice	414
7. Practical Suggestions	417

Part V

Amicable Dispute Resolution Worldwide **419**

Chapter 20

The Bi-modal Pattern of Mediation in the United States and Canada **421**

Nancy A. Welsh

1. Introduction	421
2. Mediation in the United States	422
3. Mediation in Canada	426
4. Conclusion	427

Chapter 21

ADR in Australia **429**

Alan Limbury

1. Brief History of the Modern Development of ADR	429
2. Admissibility of Evidence of Communications Made during Mediation	437
3. Confidentiality of Mediation	442
4. Enforceability of Agreements to Mediate	444
5. Hybrid Processes	451

Table of Contents

Chapter 22

Securing Investment: Innovative Business Strategies for Conflict Management in Latin America

457

Mariana Hernández Crespo

1.	Introduction	457
2.	The Insufficiency of Traditional Strategies: Challenges to Securing Investment with Weak Enforcement	459
2.1.	Using the Judicial System and ADR to Secure Investment	459
2.2.	ADR Trends in the Region	461
3.	Innovation for Securing Investments: Micro- and Macro-Level Strategies in the Local Context	462
3.1.	Micro-Level Strategies for Securing Investment: Sustainable, Nearly Self-Enforcing Agreements	462
3.1.1.	Satisfy Everyone's Interests (Including Third Parties Not Present)	462
3.1.2.	Plan for Future Change and Conflict	465
3.2.	Macro-Level Strategies for Securing Investment: Maximizing Dispute Resolution Systems in Latin America	466
4.	Tailored Business Strategies for Securing Investment: Building Country-Specific Knowledge	470
4.1.	Context Matters	470
4.2.	Background and Frameworks for Investment: Argentina, Brazil, México	471
4.3.	Argentina	471
4.3.1.	Background	471
4.3.2.	Legal Framework	474
4.3.2.1.	Arbitration	474
4.3.2.2.	Mediation	478
4.3.3.	ADR Institutions	482
4.3.4.	Reaction to ADR	485
4.4.	Brazil	486
4.4.1.	Background	486
4.4.2.	Legal Framework	489
4.4.2.1.	Arbitration	490
4.4.2.2.	Mediation	494
4.4.3.	ADR Institutions	497
4.4.4.	Reaction to ADR	499
4.5.	México	501
4.5.1.	Background	501
4.5.2.	Legal Framework	503
4.5.2.1.	Arbitration	504
4.5.2.2.	Mediation	507
4.5.3.	ADR Institutions	510
4.5.4.	Reaction to ADR	512
5.	Conclusion	513

Chapter 23	
Recent Developments in Mediation in East Asia	515
<i>Carol Liew</i>	
1. Introduction	515
2. Overview of Mediation in Asia	517
2.1. Formation of the Asian Mediation Association	517
2.2. Other International Initiatives in Asia	519
3. Mediation in Singapore	520
3.1. Singapore Mediation Centre	521
3.1.1. Industry-Related Mediation Schemes	521
3.1.2. Developments in Case Management	522
3.1.3. SMC Book Project: An Asian Perspective on Mediation	523
3.1.4. Training and Education	524
3.2. Court-Based Mediation: Subordinate Courts of Singapore	525
3.2.1. Case Management	525
3.2.2. Other Developments in the Courts	526
3.3. Community Mediation Centres	527
3.4. Other Developments	528
3.5. Reaction to Mediation	530
4. Mediation in Other East Asian Nations	531
4.1. China	531
4.1.1. Judicial Mediation	531
4.1.2. New Mediation Law and other Laws Involving Mediation	532
4.1.3. Reaction to Mediation	533
4.2. Hong Kong	534
4.2.1. Civil Justice Reform	534
4.2.2. Secretary of Justice's Working Group on Mediation	536
4.2.3. Other Developments	537
4.2.4. Reaction to Mediation	538
4.3. India	539
4.3.1. Court-Connected Mediation	539
4.3.2. Mediation Institutions	539
4.3.3. Community Mediation	540
4.3.4. Reaction to Mediation	541
4.4. Indonesia	541
4.4.1. Court-Annexed Mediation	541
4.4.2. Reaction to Mediation	543
4.5. Japan	544
4.5.1. ADR Promotion Law	544
4.5.2. Reaction to Mediation	545
4.6. Malaysia	546
4.6.1. Mediation Law	546
4.6.2. Courts and Mediation	547
4.6.3. Reaction to Mediation	548

Table of Contents

4.7.	The Philippines	548
4.7.1.	Court-Annexed Mediation	549
4.7.2.	New Rules Affecting ADR	549
4.7.3.	Reaction to Mediation	549
4.8.	Republic of Korea	550
4.9.	Thailand	550
4.9.1.	Court-Connected Mediation	550
4.9.2.	Industry-Specific Mediation	551
4.9.3.	Reaction to Mediation	552
5.	Development and Growth of Mediation in Other East Asian Countries	552
5.1.	Vietnam	552
5.1.1.	Legal Framework	552
5.1.2.	Mediation Institutions in Vietnam	553
5.1.3.	Reaction to Mediation	554
5.2.	Taiwan	554
5.2.1.	Legal Framework	554
5.2.2.	Mediation Institutions in Taiwan	555
5.2.3.	Reaction to Mediation	555
6.	Conclusion	556

Chapter 24

The Arab World

559

Nathalie Najjar

1.	Introduction	559
2.	Legal Rules Related to ADR	560
2.1.	Effective Legislation	560
2.1.1.	Agreed Mediation in Morocco	560
2.1.2.	Court-Annexed Mediation and Conciliation in Algeria	562
2.1.3.	Private and Court-Annexed Mediation in Jordan	563
2.2.	Draft Laws	565
2.2.1.	Court-Annexed Mediation in Lebanon	566
2.2.2.	Bahrain	567
3.	Lack of a Comprehensive Legal Framework	568
3.1.	Recognition and Establishment by Islamic Shari'a	568
3.1.1.	Legality of Amicable Means of Settling Disputes as Favoured by the Islamic Shari'a	569
3.1.2.	Features of ADR in the Shari'a	570
3.1.2.1.	Confusion Among Arbitration, 'Amiable Composition', Mediation and Conciliation	570