

INTERNATIONAL COMMERCIAL MEDIATION

Law and Regulation in
Comparative Context



RONÁN FEEHILY

International Commercial Mediation

Christian Drosten



International Commercial Mediation:

International Commercial Mediation Ronán Feehily, 2022-09-08 In this comprehensive comparative study Ronán Feehily analyses the legal and regulatory issues surrounding international commercial mediation and discusses their implications in a range of settings While existing literature tends to cover mediation in general Feehily places the commercial mediation process in its legal and regulatory context offering an original contribution to the field The book identifies the controversies that arise from the mediation process across numerous jurisdictions and discusses them in detail Comparing the mediation process in Europe North America and Australia as well as other common civil and mixed jurisdictions Feehily demonstrates where systemic differences are transcended and where they are significant Organised systematically and written in an accessible style Feehily offers an international holistic guide to the commercial mediation process

Mediation in International Commercial and Investment Disputes Catharine Titi, Katia Fach Gómez, 2019 Until now the resolution of international commercial and investment disputes has been dominated almost exclusively by international arbitration But international mediation and conciliation are now coming to the fore This book brings together a line up of highly qualified experts to address this topical complex subject from a variety of angles

International Commercial Mediation Cyril Chern, 2020-11-26 International Commercial Mediation is a practical guidebook that explains how to handle and complete a mediation as well as how to personally market the skills developed as a mediator The book provides examples supplies forms and explains procedures of actual working mediations which can be used to adapt to individual needs It also deals with advanced practitioner issues and the emerging law on international mediation

International Commercial Mediation Training Role -plays Greg Bond, 2015

International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions Peter Binder, 2019-05-14 International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions Fourth Edition Dr Peter Binder This new edition of a classic text is so extensively revised and updated as to constitute a new book It does however retain the tried and tested article by article structure of the previous three editions it covers all the information needed when contemplating cross border arbitration or mediation and enables a practitioner to ascertain what to expect in each jurisdiction It remains the only book that provides a complete overview of all the adopting jurisdictions now 111 at one glance with a description of the legislation in these jurisdictions counterbalanced by court rulings to demonstrate how matters are dealt with in everyday practice The popular adoption chart matrix unique to this book has been further enhanced and updated Featuring the first full commentary on the newly released 2018 UNCITRAL Model Law on International Commercial Mediation including its revolutionary regime for the enforcement of settlement agreements reached by means of mediation and an update of all case law on UNCITRAL texts CLOUT to date the fourth edition provides explicit expert guidance on such matters as the following overview of each jurisdiction that has enacted the Model Laws provisions in a particular national Model Law enactment to be watched out for how a particular issue dealt with

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

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

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

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

Combining Mediation and Arbitration in International Commercial Dispute Resolution Dilyara

Nigmatullina,2018-06-28 Securing fast inexpensive and enforceable redress is vital for the development of international commerce In a changing international commercial dispute resolution landscape the combined use of mediation and arbitration has emerged as a dispute resolution approach which offers these benefits However to date there has been little agreement on several aspects of the combined use of processes which the literature often explains by reference to the practitioner s legal culture and there is debate as to how appropriate it is for the same neutral to conduct both mediation and arbitration Identifying the main ways of addressing concerns associated with the same neutral conducting both mediation and arbitration same neutral arb med arb this book examines how effectively these methods achieve the goal of fast inexpensive and enforceable dispute resolution evaluating to what extent the perception and use of the same neutral arb med arb depends on the practitioner s legal culture arguing that this is not a one size fits all process Presenting an empirical study of the combined use of mediation and arbitration in international commercial dispute resolution this book synthesises existing ways of addressing concerns associated with the same neutral arb med arb to provide recommendations on how to enhance the use of combinations in the future Mediation and Commercial Contract Law Maryam Salehijam,2020-12-10 There is an urgent need to better understand the legal issues pertaining to alternative dispute resolution ADR particularly in relation to mediation clauses Despite the promotion of mediation by dispute resolution providers policy makers and judges use of mediation remains low In particular problems arise when parties lack certainty regarding the legal effect of a mediation clause and the potential uncertainty regarding the binding nature of agreements to pursue mediation is problematic and threatens the growth of ADR This book closely examines the importance and complexity of mediation clauses in commercial contracts to remedy this persistent uncertainty Using comparative law methods and detailed empirical research it explores the creation of a comprehensive framework for the mediation clause Providing valuable insight into the process of ADR and mediation this book will be of interest to academics law makers law students in house council lawyers as well as parties interesting in drafting enforceable mediation clauses , *Handbook of Evidence in International Commercial Arbitration* Franco Ferrari,Friedrich Rosenfeld,2022-04-07 In arbitration evidence provides the basis for almost every decision be it procedural jurisdictional or substantive However users from different legal traditions may not share the same understanding as to how an arbitral tribunal ought to proceed in this regard Therefore it is important for lawyers to know how to collect develop and present evidence in arbitration proceedings not only from a legal perspective but also from a cultural point of view It is against this backdrop that the editors have invited a diverse group of distinguished arbitration practitioners and academics to contribute to this matchless Handbook of Evidence in International Commercial Arbitration Key concepts and issues related to evidence in arbitration covered include the following the normative framework on evidence in arbitration proceedings the burden and standard of proof means of evidence including documents experts and witnesses questions of admissibility including issues of privilege and confidentiality the assessment of evidence and its

probative value court assistance and sanctions With its systematic analysis of the key concepts of evidence holistic discussion of the applicable normative framework cross cultural perspectives on the taking of evidence in arbitration and reference to case law from major arbitration hubs this book will become an undisputed point of reference for academics and practitioners alike Critical acclaim This handbook elegantly captures the range of issues that arises regarding evidence in international arbitration Bringing together the foremost experts in the field each contribution offers a thoughtful analysis on these issues and the compilation deserves a prominent spot in every practitioner s arbitral library Chiann Bao Independent Arbitrator Arbitration Chambers and Vice President of the ICC Court of Arbitration This publication well deserves recognition as a landmark handbook on evidence in international commercial arbitration It comprehensively discusses the whole evidentiary process from its foundations taking a comparative and harmonizing perspective as well as the burden and standards of proof to the various evidentiary means up to the assessment of evidence Written by leading academics and practitioners from all over the world it will be a safe haven for anyone facing discrete evidentiary issues and looking for answers to fundamental or actual questions including as to privileges confidentiality virtual hearings or data protection Professor Filip De Ly Chair of the ILA International Commercial Arbitration Committee [The Arbitrator's Role as a Settlement Facilitator in International Commercial Arbitration](#) Carmel Wahby,2025-12-09 In light of concerns about the increasing judicialization of international arbitration alongside broader shifts in the transnational dispute resolution landscape a recalibration of traditional adjudicative methods is underway This evolution favors approaches that combine adjudicative and non adjudicative techniques to enhance flexibility party autonomy efficiency the preservation of business relationships and the promotion of early settlements with the assistance of an adjudicator This groundbreaking book presents the first comprehensive analysis of one of the most innovative developments in this context the role of the arbitrator as settlement facilitator a dual function that challenges conventional boundaries by enabling arbitrators in appropriate circumstances to foster amicable resolution alongside their adjudicative duties The author maps and categorizes a wide spectrum of settlement facilitation methods both established and innovative and compares diverse approaches that acknowledge and promote this practice Key areas of discussion include the range of arbitrator initiatives in setting the stage for settlement relevant principles divergences and emerging transnational trends across legal systems institutional rules domestic legislation and normative instruments that support or limit implementation safeguards for impartiality party autonomy and due process and mechanisms to ensure the finality and enforceability of settlements To support safe and effective implementation the book provides practical solutions for parties seeking to empower arbitrators as settlement facilitators offering concrete safeguards that can be integrated into arbitration agreements It also advances broader recommendations to foster international recognition and harmonization ensuring sustainable integration of this practice across legal systems The settlement facilitation methods and safeguards presented will enable practitioners to enhance efficiency reduce costs and streamline dispute resolution in both commercial

and investment arbitration In addition the book s comparative analysis will equip arbitrators arbitral institutions and policymakers with a global perspective on regulatory frameworks enabling them to make informed choices regarding settlement facilitation across different jurisdictions

Uniform [International] Commercial Mediation Act [consultation Document]. ,2005 *Commercial and Maritime Law in China and Europe* Shengnan Jia,Lijun Liz

Zhao,2022-12-26 Both China and Europe have a long tradition of commercial and maritime law and this new book examining various topics from their particular perspectives is both timely and important It links the vital component of maritime law with commercial law financial law and trade policy The book has performed a remarkable task in making connections between China and Europe through the lenses of substantive and procedrual laws covering a wide range of areas including commercial law insurance law salvage EU maritime law and Brexit carriage of goods by sea arbitration mediation litigation the recently formed China International Commercial Court and different liability regimes as well as a brief look forward into new initiatives and artificial intelligence in the digital age In these challenging times we all have much to learn from each other in seeking to find answers to what are often difficult problems This book provides a welcome opportunity for anyone interested in commercial and maritime law to engage in that learning exercise and looking ahead thereby to help solve such problems as may arise in the future in a practical and fair manner It is therefore of great relevance to both the academic field and the legal practice field in China and Europe

Foreign-Related Commercial Disputes Resolution in China Jianli Song,Bing Cheng,2024-03-28 Combining the author s many years of legal practice experience this book examines the current hot and difficult issues arising in the legal practice of foreign related commercial disputes in China The book focuses on the application of the United Nations Convention on Contracts for the International Sale of Goods CISG in Chinese courts judicial review of foreign related arbitral awards judicial cooperation in cross border insolvency and legal relationships in legal disputes over electronic commerce The book pays close attention to the latest legislative achievements of the international community and their impact on Chinese judicial practice thus helping to strengthen exchanges and cooperation among countries along the Belt and Road and providing more effective rule of law protection for Chinese enterprises going global

Transnational Commercial Disputes in an Age of Anti-Globalism and Pandemic Sundaresh Menon,Anselmo Reyes,2023-01-12 In this book senior judges and academics at the forefront of transnational commercial law in Asia Australia Europe the US and elsewhere reflect on the implications of anti globalism and the COVID 19 pandemic on international commercial dispute resolution ICDR The chapters consider 1 What types of cross border commercial disputes will arise in the future and what resources will be needed to respond to them in a cost effective time efficient and equitable manner 2 Is there still merit in a multilateral approach to transnational commercial law and ICDR despite the closing of borders the rise of protectionism and the disruption of global supply chains 3 What reforms and innovations should courts arbitrators and mediators contemplate when navigating the post pandemic landscape 4 Can the accelerated use of remote technology in

ICDR as prompted by the pandemic be leveraged to enhance access to justice for all With a focus on the current crisis in globalism as well as the associated problems of ensuring justice and fairness in the resolution of cross border commercial and investment state disputes along the Belt and Road and elsewhere the book will be an invaluable resource for academics judges and practitioners alike

Ultima Thule Lucy Reed,2019 In this paper I will first consider the reasons for the low rates of successful international commercial mediations and then begin to explore what it might take to encourage the international legal and business communities to embrace mediation for international commercial disputes Lastly I will introduce and examine the new United Nations Convention on International Settlement Agreements Resulting from Mediation The Singapore Convention on Mediation in particular its role in promoting the use of international commercial mediation globally This paper was presented as the keynote address at the inaugural Schiefelbein Global Dispute Resolution Conference on 18 January 2019 at the Sandra Day O Connor School of Law of Arizona State University

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

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

continued initiatives to foster the use of mediation form the foundation upon which this book s recommendations are built Changing the frame to view the use of mediation through the disputants perspective as this book does provides the opportunity for the EU to promote cross border mediation in a way which resonates more deeply with disputants and responds more fully to their concerns and needs This thought provoking book will be of interest not only to European and national bodies seeking to promote the use of mediation but clearly also to dispute resolution academics in house counsel and of course mediators and dispute resolution practitioners in general

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