

Overview of International Institutions' Cross Border Mediation Rules

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Growth of Mediation in International Commercial Disputes

- Differences in the U.S. and Europe
 - Historical development
 - U.S., England, Central, Eastern, and Western Europe
 - Conciliation v. Mediation
 - Common v. Civil Law

Virtually all International Arbitral Institutions Offer Mediation

- International dispute resolution institutions have grown with the mediation trend
- They have developed and revised rules to include the option of mediation

Promotion of Mediation by International Dispute Resolution Institutions

- International Chamber of Commerce (ICC)
 - “Amicable Dispute Resolution”
 - Mediation is a neutral facilitation of negotiated settlement; default ADR technique
 - Private and Confidential with 2 exceptions
 - Selection of Neutral
 - Conduct of ADR Procedure

Promotion of Mediation by International Dispute Resolution Institutions

- American Arbitration Association's (AAA)
International Centre for Dispute Resolution
(ICDR)
 - Mediation and Mediator's Role Defined
 - Appointment of Mediator
 - Identifying matters in dispute
 - Confidentiality
 - Sample Clauses

Promotion of Mediation by International Dispute Resolution Institutions

- International Institute for Conflict Prevention and Resolution (CPR Institute)
 - CPR European Mediation Procedure (1996)
 - Selecting Mediator
 - Ground Rules
 - Negotiation of Terms
 - Confidentiality

Promotion of Mediation by International Dispute Resolution Institutions

- **London Court of International Arbitration
(LCIA)**
 - LCIA only publishes ADR rules for mediation
 - Commencing Mediation
 - Appointment of Mediator
 - Statements by Parties; Conduct of Mediation
 - Confidentiality and Privacy

Promotion of Mediation by International Dispute Resolution Institutions

- Commercial Arbitration and Mediation Center of the Americas (CAMCA)
 - For commercial parties involved in free trade
 - Joint creation by leading national institutions
 - In that respect, rules are similar to AAA
 - Commencing mediation; Panel of mediators;
 - Privacy and confidentiality

Promotion of Mediation by International Dispute Resolution Institutions

- United Nations Commission on International Trade Law Conciliation Rules (UNCITRAL)
 - Model Law: International Commercial Conciliation
 - Broad definition of “conciliation”
 - Appointment of conciliators; Confidentiality
 - Option of conciliator acting as arbitrator – shall not unless otherwise agreed
 - Legislation based on UNCITRAL Rules enacted in Canada, Croatia, Hungary, Nicaragua

Promotion of Mediation by International Dispute Resolution Institutions

- **Cairo Regional Centre for International Commercial Arbitration (CRCICA)**
 - Operating in Egypt since 1979
 - Administers cases on basis of UNCITRAL Arbitration Rules
 - CRCICA's Mediation Rules

International Mediation Practices: Mediator Selection

- Nationality and background
- Common v. civil law
- Occupation
 - Jurist v. industry expert

International Mediation Practices: Techniques

- Define mediation and mediator's role
- Three varieties of mediation
- Co-mediation – alert to cultural and legal differences
- Joint Sessions v. Private Caucuses
- Options

International Mediation Practices: Structural Options

- Mediation part of broader dispute resolution plan
- Multi-tiered dispute resolution clauses
 - Negotiation, mediation, arbitration

International Mediation Practices: Sample Clause

- The parties shall endeavor to resolve any controversy or claim arising out of or in connection with this agreement or the breach, termination or validity thereof, by mediation under the [Insert Institution] in effect on the date of this Agreement. Unless otherwise agreed, the parties will select a mediator from the list of [Insert Institution] neutral third-parties.

International Mediation Practices: Sample Clause

- All negotiations and proceedings pursuant to paragraph 1 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law.

International Mediation Practices: Sample Clause

- If the dispute has not been resolved by mediation as provided herein within [60] days of the initiation of such procedure, either party may initiate arbitration in accordance with [Provision 2].