International Commercial Mediation: How Culture and Regulation are Affecting the Business and the Practice of Mediation

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CLE Materials & Speaker Biographies
Skadden Conference Center | 150 West 62nd Street, New York City
International Commercial Mediation: How Culture and Regulation are Affecting the Business and the Practice of Mediation

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Global Pound Conference Series. Shaping the Future of Dispute Resolution & Improving Access to Justice. (Cumulated Data Results)

Speaker Biographies

Nadja Alexander
Professor of Law, Singapore Management University
Academic Director, Singapore International Dispute Resolution Academy (SIDRA)

Nadja Alexander is Professor of Law at the Singapore Management University and Academic Director of the Singapore International Dispute Resolution Academy, Asia’s first institution dedicated to thought leadership and educational excellence in negotiation and dispute resolution.

Nadja is an award-winning author and educator and has been engaged as a policy adviser and conflict intervener in legal, corporate and development settings in more than 30 countries. Her work on designing regulatory frameworks for cross-border mediation has been applauded by policy makers and scholars. Nadja is also editor of the Global Trends in Dispute Resolution book series and the Kluwer Mediation Blog. Her work has been published variously in English, German, Chinese, Russian, Spanish and Arabic.

Nadja is Vice Chair of the Mediation Committee of the IBA and sits on various other boards and bodies. She is a Senior Fellow of the Dispute Resolution Institute at Mitchell Hamline School of Law, The United States and holds honorary professorial appointments at the Universities of Queensland and Newcastle, Australia.

Dr. Guido Carducci
Professor of Law, Université Paris-Est; Arbitrator/Mediator

Based in Paris and Rome, Guido Carducci acts as arbitrator and mediator, expert witness, and counsel, in commercial and investment disputes, and in art and cultural property disputes. He works in International Law (Public, Economic, Conflict of laws), European Union Law, and French and Italian Law.

Guido is a law professor in Paris, mainly in Commercial Law and International Business Law, an attorney-at-law, a Chartered Arbitrator (FCI Arb) on various Panels of arbitrators. Member of three ICC Commissions (Arbitration and ADR, Competition, Commercial Law and Practice), Vice-Chair of the ABA’s International Arbitration Committee, Guido is the former Chief of the International Standards Section at UNESCO (Paris HQ 2002-2008) in charge of international standard-setting, treaty-making and implementation, of UNESCO conventions and instruments related to art and cultural property, for UNESCO and its (192) Member States. He served as mediator between the UK and Greek governments with regard to the Parthenon Marbles in the British Museum. He published widely and is a regular speaker in conferences.

Professor Ilhyung Lee
Professor of Law, University of Missouri

Ilhyung Lee is Edward W. Hinton Professor of Law and Senior Fellow, Center for the Study of Dispute Resolution, at the University of Missouri. He specializes in the fields of international dispute resolution, law and society in East Asia, and international and comparative law. He also teaches sports law and trademarks.

Professor Lee is included in the roster of neutrals for the Court of Arbitration for Sport (Mediators List), the International Centre for Dispute Resolution, USA Track & Field, the University of Missouri Campus Mediation Service, and the World Intellectual Property Organization (WIPO). His private practice experience includes positions at Cravath, Swaine & Moore (New York) and Kim & Chang (Seoul, Korea). Previously, he was law clerk to the Honorable Joseph F. Weis, Jr., of the U.S. Court of Appeals for the Third Circuit.

Deborah Masucci, Esq.
Co-Chair, International Mediation Institute

Deborah Masucci is a full time mediator and arbitrator as well as Chair and Board Member of the International Mediation Institute (IMI). She has been appointed as an arbitrator in over 150 matters covering employment, commercial, breach of contract, insurance coverage, and professional fee disputes. Deborah has been appointed to mediate matters involving employment, insurance coverage, business interruption, commercial business, and breach of contract. She is on the American Arbitration Association Commercial and Employment panels, the American Health Lawyers Association panels, the ICC Panel of Experts, an International Accredited Mediator with the Hong Kong Joint Mediation Center, and a member of the American College of Civil Trial Mediators as well as the International Arbitration Club of New York.

She is a global expert in alternative dispute resolution and dispute management with over thirty years’ experience in promoting the effective use of ADR in many capacities. She is a published author on ADR issues and frequently speaks on the topic. She was former Chair of the ABA Section for Dispute Resolution where she was a founding member of Women in Dispute Resolution and co-founder of Minorities in Dispute Resolution. She is Chair-Elect of the NYSBA Dispute Resolution Section. Deborah is a member of the Board of Editors for the Securities Arbitration Commentator and serves on the Board of Advisors for “Arbitrator Intelligence”. She is co-author of a Chapter on ADR Providers for ADR in Employment Law, and author of a Chapter on Securities Dispute Resolution for the Dispute Resolution Handbook.

Jacqueline Nolan-Haley
Professor of Law, Fordham Law School

Jacqueline Nolan-Haley is a Professor at Fordham University School of Law where she directs the Conflict Resolution & ADR Program, and the Mediation Clinic. She teaches courses in Alternative Dispute Resolution, International Dispute Resolution, Interethnic Conflict Resolution, Catholic Perspectives on Conflict Resolution, and Mediation at Fordham Law School and in its Queens University Belfast and University College Dublin Summer Program. She has also conducted conflict resolution training programs in Ghana, Northern Ireland and in the United States.

Professor Nolan-Haley is a member of the Standing Committee on Mediator Ethical Guidance of the ABA Dispute Resolution Section. She is chair of the Education Committee of the New York State Bar Association’s Dispute Resolution Section. She is a member of the Chartered Institute of Arbitrators and is former Chair of the Alternative Dispute Resolution Section of the Association of American Law Schools, and the New York State Bar Association’s Alternative Dispute Resolution Committee. Professor Nolan-Haley’s scholarship focuses on ethical and justice issues related to ADR and international and comparative conflict resolution. Her recent publications include: Designing Systems for Achieving Justice after a Peace Agreement: The Case of Northern Ireland, 13 University of St. Thomas L. Journal 315 (2017); Mediation and Access to Justice in Africa: Perspectives from Ghana, 21 Harvard Negotiation L. Rev. 59 (2015); and Mediation: The Best and Worst of Times, 16 Cardozo J. Dispute Resolution 731 (2015).
Since joining JAMS as a full-time neutral in 1989, Michael D. Young, Esq. has conducted over 1800 complex or multi-party mediations and arbitrations in over thirty states (as well as in Puerto Rico) and abroad (such as in Rome, Madrid and Zurich), including approximately 250 arbitrations, appraisals or other binding dispute resolution proceedings. He has been appointed as a mediator or special master (for discovery management or settlement implementation purposes) by various federal, state and bankruptcy courts. Michael specializes in the resolution of commercial (including financial instrument and contract issues), insurance coverage, professional liability, construction and employment disputes.

Michael has been recognized as a leading neutral in the US and abroad. For example, in 2016 and 2017, Chambers and Partners identified him as one of the seven mediators in the United States recognized in Band One. He also has been recognized in “International Who’s Who in Commercial Mediation” and “International Who’s Who in Insurance and Reinsurance.” In addition to serving on the JAMS and JAMS International panels, Michael is a member of the CPR International Institute for Conflict Prevention and Resolution Panel of Distinguished Neutrals and is a member of the panels of the Beijing Arbitration Commission, Singapore International Mediation Center, Afghanistan Centre for Commercial Dispute Resolution and Center for Arbitration and Dispute Resolution in Israel. He is also an elected fellow of the College of Commercial Arbitrators and an elected “neutral” member of the College of Labor & Employment Lawyers.
EU Mediation Law Handbook
Global Trends in Dispute Resolution

VOLUME 7

Series Editor

Nadja Alexander, Academic Director, Singapore International Dispute Resolution Academy; Visiting Professor, Singapore Management University; Hon. Professor, The University of Queensland; Senior Fellow, Dispute Resolution Institute, Mitchell Hamline School of Law. Professor Nadja Alexander has written more than 10 books and 100 articles in the field of negotiation and dispute resolution. She is known for the passion, energy and creativity she brings to her various roles as scholar, policy adviser, mediation practitioner and trainer.

Introduction

Global Trends in Dispute Resolution offers readers a garden rich in ideas and insights into contemporary dispute resolution principles, processes, and practices. The series leads the way in first-class debate and analysis of dispute resolution trends across our rapidly globalizing world. More particularly, its volumes analyse dispute resolution developments in various geographical regions around the world and in relation to diverse transnational practice areas. These practice areas include not only well-established legal categories such as intellectual property, construction, and resources law, but also emerging dispute resolution trends ranging from dispute systems design to cross-border mediation in private and public law.

Objective

With a particular focus on new initiatives and ADR practices, the Global Trends in Dispute Resolution series aims to provide practitioners, scholars, policymakers, and ‘pracademics’ (that elusive yet rapidly emerging category of practical academics and academically-oriented practitioners – you know who you are) with the resources both to cultivate the dispute resolution gardens of the world and to explore new paths within and beyond them.

Frequency

A volume is published whenever an interesting topic presents itself.

The titles published in this series are listed at the end of this volume.
EU Mediation Law Handbook
Regulatory Robustness Ratings for Mediation Regimes

Edited by
Nadja Alexander
Sabine Walsh
Martin Svatos

Wolters Kluwer
Nadja Alexander is an award winning author and educator, a conflict intervention professional, and an adviser on mediation policy to international bodies and national governments. She is the Academic Director of the Singapore International Dispute Resolution Academy and Visiting Professor of Law at Singapore Management University. Her work has appeared in English, German, French, Arabic, Russian and Chinese languages. Nadja has worked in conflict resolution settings in more than thirty countries across Africa, Asia, Europe, the Americas and Oceania. She sits on mediation panels in Singapore, Hong Kong and Australia and is Vice-Chair of the IBA Mediation Committee, on the International Advisory Board of the Vienna International Arbitration Centre and a board member of the Singapore International Mediation Institute. Nadja holds concurrent appointments as Honorary Professor of Law at the University of Queensland, Australia and Senior Fellow of the Dispute Resolution Institute at Mitchell-Hamline School of Law in the United States. She was previously a Humboldt Fellow at the Max Planck Institute in Germany.

Sabine Walsh is a practicing mediator and academic specialising in cross-border mediation. She has primary and Master’s degrees in Law, is a qualified lawyer and advanced member of the Mediators’ Institute of Ireland. She has additional qualifications in cross-border mediation and online mediation. She practises mediation and leads innovative postgraduate courses in Mediation and Conflict Management at St. Angela’s College, National University of Ireland. She is a co-founder of the Prague Summer Mediation Academy at Charles University, Prague. Her interest in cross-border mediation stems from her binational, Irish-German background. She is currently serving as the President of the Mediators’ Institute of Ireland. She provides mediation education, training and consultancy for state and private agencies and is a regular presenter at national and international mediation conferences.

Martin Svatos, PhD, is a mediator and arbitrator based in Prague, Czech Republic. He has been involved in more than 100 mediation cases, both domestic and international. In addition to his rich dispute resolution practice, he teaches at Charles University in Prague and several other universities around the globe. He also acts as a legal expert of
the Czech delegation to the UNCITRAL WG II and as President of the Working Group of the ICC Czech Republic for Mediation. Martin has acted in several ad hoc and institutional arbitrations both as an arbitrator and as an external legal counsel. He is listed by the VIAC and by the Arbitration Court of the Football Association of the Czech Republic. He publishes and gives speeches at international conferences on a regular basis (the UIA World Forum of Mediation Centers, the IBA Annual Conference, the German Arbitration Institute Annual Conference, the Conference of the Mediators’ Institute of Ireland (Dublin) and YIAG conferences (Istanbul, Warsaw)).
Contributors

Miguel Cancella d’Abreu is a Portuguese attorney, arbitrator and mediator, and is Chairman of the Board of the General Meeting of FMC – Portuguese Federation of Conflict Mediation and Founding Associate and Secretary General of CONCÓRDIA CENTER – Conciliation, Conflict Mediation and Arbitration since 2003.

Apostolos Anthimos is an Attorney-at-Law, Thessaloniki Bar, Greece. He holds a PhD in International Civil Litigation (2002). He is the author of four monographs on Civil Procedure and International Civil Litigation issues, publications in Greek and foreign law reviews, on topics related to international litigation, arbitration and dispute resolution. He has been serving as a panellist at the Czech Arbitration Court [.eu ADR] since 2006 and regularly reports on Greek case law on International Civil Litigation (https://icl-in-greece.blogspot.gr).

Johan Billiet is a lawyer at the Dutch speaking Brussels Bar, a mediator in civil and commercial, social and family matters in Belgium, and an MfN-registered mediator in the Netherlands. He teaches Mediation and Arbitration at Vrije Universiteit Brussel and is a member of the ADR Commission at the Flemish Bar Association.

Clara Moreira Campos is a Portuguese attorney and mediator, included on the official list of Conflict Mediators of the Portuguese Ministry of Justice, and is Secretary of the Board of the General Meeting of CONCÓRDIA CENTER – Conciliation, Conflict Mediation and Arbitration since 2012.

Adrian Delia heads the litigation team at Aequitas Legal and has been practising law for over twenty years. He has advised local and multinational entities alike and is known to be an able legal strategist and forward thinker, often providing pragmatic solutions to complex disputes.

Constantin-Adi Gavriliă is an independent mediator since 2003, working with individuals, organisations and governments from more than twenty countries. He was honoured with the ACR International Development Committee’s 2009 Outstanding…
Leadership Award, and he serves as Co-Chair of the IMI’s Independent Standards Commission.

**Evgeni Georgiev** is a civil trial judge of the Sofia City Court, the first judge who implemented mediation techniques in the court room. Along with volunteer mediators and fellow judges, he initiated and developed the Settlement and Mediation Center at the Regional Court of Sofia and Sofia City Court – the first sustainable court-annexed mediation programme in Bulgaria. Evgeni Georgiev is a recipient of the Weinstein International Fellowship Award of JAMS Foundation.

**Gustav Flecke-Giammarco** is a senior associate at Heuking Kühn Lüer Wojtek (HKLW). Prior to joining HKLW, Mr Flecke-Giammarco was Deputy Counsel (2009–2011) and Counsel (2011–2015) at the Secretariat of the ICC International Court of Arbitration. Mr Flecke-Giammarco completed his legal education at the Universities of Passau, Munich and Pavia. He was admitted to the Munich Bar (Rechtsanwalt) in 2009 and is a business mediator (Wirtschaftsmediator (MuCDR)).

**Carri Ginter** is a partner and head of the Dispute Resolution Team in Baltics and Belarus offices of Sorainen. Carri is a leading expert in Estonia in EU law and mediation.

**Louise Lerche-Gredal** is an Attorney-at-Law and Managing Director of the Danish Mediation Institute. She holds a Master’s in Communication and a Master’s in Business Administration (MBA) and is an experienced mediator at the San Diego Superior Court, Small Claims Division, California.

**Manuela Renáta Grosu** is a Hungarian qualified lawyer. She regularly teaches Alternative Dispute Resolution at ELTE University, Budapest, where she is a PhD candidate. Her practice focuses on disputes, regulatory assignments and commercial law.

**Tatiana Hambalkova** grew up in Bratislava, Slovakia. She obtained her Master’s in Business and Marketing from the University of Economics in Bratislava. In 2005, she moved to Sydney, Australia where she completed her Postgraduate Law at the University of New South Wales.

**Charlie Irvine** is a Senior Teaching Fellow at the University of Strathclyde, Glasgow, where he founded the Masters in Mediation and Conflict Resolution and associated mediation clinic. He is also an experienced mediator and past chair of the Scottish Mediation Network.

**Boris Jukić** (1962, Zagreb, Croatia) is an Attorney-at-Law, owner of his legal practice and sole practitioner since 2000. Boris lives and works in Zagreb. He is an accredited mediator, transactional analysis (TA) practitioner and TA mediator and is a member of the Board of the Mediation Centre of the Croatian Bar Association and member of the editorial board Odvjetnik (Attorney), journal of the Croatian Bar Association and honorary consul of the Republic of Estonia to the Republic of Croatia.
Dr Alexandra Kapišovská, PhD, graduated from the Faculty of Law of the University of Matej Bel in Banská Bystrica, Slovakia. In 2002–2004, she was one of the members of the Working Group charged with preparation of the Slovak Law on Mediation and she led three projects on behalf of the Ministry of Justice of the Slovak Republic focused on better access to justice via mediation. She is the author of several publications and articles on different issues. Currently she is a public official of the Ministry of Justice of the Slovak Republic.

Petra Hietanen-Kunwald, Mag.iur., LLM, is a lawyer specialising in business law, CEDR-accredited mediator and Research Fellow at the University of Helsinki Conflict Management Institute. She is working on her PhD thesis on mediation as a dispute resolution mechanism and teaches Mediation at the University of Helsinki.

František Kutlík is a professional mediator and pedagogue, Chairman of the Slovak Institute for Mediation, former vice-president of World Mediation Forum, and has current involvement in intercultural, interethnic and interreligious mediation. He is the author of Mediation in the Self-Government, Mediation for Procedure Participants, the author of the script of an educational DVD for mediators The Alphabet of Mediation, and co-author of five parts of a TV series promoting mediation for the general public.

Dr Jan Kayser completed binational law studies in Potsdam and Paris including a thesis on alternative dispute resolution and then practised as a lawyer for six years before setting up the Luxembourg Mediation Centre for Civil and Commercial Affairs (CMCC). He is the President of the Luxembourg Mediators’ Association (ALMA) since 2014.

Prof. and Dr in Christina Lenz is a lecturer of Law, Economics, Negotiation and Mediation at the University of Applied Sciences HSWT in Freising/Munich (Germany), and leads the Master course ‘Mediation, Negotiation, Communication and Conflict management’ at the University in Graz (Austria) and is a certified business mediator in both countries. For twenty years, she has been responsible for quality and certification in the German Association of Mediation in Business and Working Environment (BMWA), and from 2008 to 2012, she was a member of the experts group at the Ministry of Justice in preparation of the German Mediation Law (in force since 2012) as well as the statutory regulation (coming into force in 2017).

Bengt Lindell (born 1955) is a professor and doctor of Civil and Criminal Procedure at Uppsala University in Sweden since 1990 when he was appointed by the Government to hold the position.

Mrs Sanda Elena Lungu is a judge at Craiova Court of Appeal, Commercial Division. She graduated from the Faculty of Law in 1997, where she undertook master courses in Human Rights and Community Law. She attended training courses as a mediator at International Judicial Academy – Washington DC, USA, in 2003, after which she continued implementing and promoting mediation, organising seminars, publishing articles in professional journals, and working to develop awareness in this area. At this
moment she is a member of the Association of European Judges who Support Mediation (GEMME) – Romanian Section and the Association of Craiova Mediation Center.

**Bill Marsh** is a leading, full-time international mediator, having mediated disputes from over fifty countries across a wide range of commercial and other sectors. He also acts as an adviser to a range of governments and international bodies on conflict resolution issues, and was formerly a commercial lawyer.

**Carlo Mastellone**, born in London, graduated in Law from Florence University, Italy (1978), obtained an LLM from Queen Mary College (London) (1979), and is an international business lawyer admitted to practise in Italy (since 1983) with offices in Florence and allied offices in Milan, Rome and Verona (Leg-All®). His areas of practice include ongoing consultancy and advice on company and commercial law matters, cross-border contracts and foreign investments in Italy. An accredited mediator, he is enrolled in the list of mediators of OCF – Organismo di Conciliazione di Firenze. Carlo is a member of the Executive Committee of the UIA (Union Internationale des Avocats) as Director of Publications, formerly as Director of Legal Training.

**Anamarija Milanović**, LLM is a registered mediator and a senior associate at Law Firm Kacic & Brbora, Zagreb, Croatia.

**George Mountis** has extensive experience in various fields of international commercial and corporate litigation and arbitration, and also specialises in Competition and Insolvency Law. He is a CEDR-accredited Mediator, as well as a Fellow of the Chartered Institute of Arbitrators FCiArb. The 2015 editions of Chambers Global and Chambers Europe include George among the leading lawyers for Dispute Resolution, acknowledging him as an ’excellent commercial litigator’ and praising his ability to ’pick a case apart and solve all the issues’.

**Dr. Rafal Morek** is a partner at K&L Gates, recommended as a dispute resolution and construction law practitioner by various legal rankings, including Chambers, Legal500 and Best Lawyers. He is also an assistant professor at the Faculty of Law, and a co-director of the Centre for Amicable Dispute Resolution, at the University of Warsaw.

**Michael Muscat** was recently admitted to the Maltese bar and wrote his LLD thesis on cross-border litigation in the context of European Law. He currently practises corporate and commercial law and operates within the financial services sector yet maintains a keen interest in litigation, dispute resolution and alternative dispute resolution methods.

**Dr Dilyara Nigmatullina** completed her PhD in Law at the University of Western Australia, and in 2011–2013 she managed the activities of the Association for International Arbitration. Dilyara is registered as a mediator in civil and commercial matters at the Belgian Federal Mediation Commission.

Contributors
Jan O'Neill is a professional Support Lawyer in the London disputes team of Herbert Smith Freehills LLP, focusing on commercial disputes and alternative dispute resolution.

Alexander Oddy is a disputes partner in the London office of Herbert Smith Freehills LLP focusing on insurance coverage and commercial disputes. He leads the firm’s ADR practice globally, is Deputy Head of Commercial Litigation in London, an accredited mediator and a solicitor advocate.

Kristina Osswald is Head of ADR and Public Relations at the German Institution of Arbitration (DIS). Prior to joining the DIS, she was the Deputy Counsel & Project Coordinator (2009–2011) and Strategic Project Manager (2011–2013) at the Secretariat of the ICC International Court of Arbitration. Ms Osswald completed her legal education at the Universities of Cologne, Paris I (Panthéon-Sorbonne) and the Institut d’Etudes Politiques de Paris (Sciences-Po). She holds an LLM from Georgetown University Law Center, is admitted to the New York State Bar and a CEDR-accredited mediator.

Victoria-Zoi Papagiannis, has significant experience in the areas of commercial and corporate litigation and arbitration, and also specialises in European and Human Rights Law, having brought cases before the Court of Justice of the European Union and the European Court of Human Rights. She is a Barrister-at-Law (non-practicing) and a CEDR-accredited mediator since 2011.

Machteld Pel had a long career as a judge, arbitrator, qualified mediator (MfN registered) and trainer of judges and mediators. She arbitrates and mediates contract, commercial, IT, employment, education, medical and family-business matters in the Netherlands and abroad. She is a consultant on designing dispute management systems and an adviser on specific conflict issues. She has published books and numerous articles on mediation and referral to mediation.

Maria Pihlak is an associate in the Dispute Resolution Team in Sorainen’s Estonian office specialising in cross-border dispute resolution.

Martin Risak is an associate professor at the Department of Labour Law and Law of Social Security at the University of Vienna (Austria) where he teaches Austrian and European Labour and Social Security Law as well as Mediation. Since 2016, Martin has also been the chairperson of Senate II of the Equal Treatment Commission, and from 2010 to 2012, he was a Marie Curie Fellow in New Zealand and Austria researching the mediation of employment rights disputes.

Laura Ristori, born in 1968, graduated with honours in 1992 from the University of Florence, and obtained an LLM at Columbia University in 1995; since then she has been working as a business lawyer in Florence. She holds a PhD in European Competition Law obtained in 2006. Being trained in mediation and negotiation at Harvard Law School, then in Florence, Mexico, France and Slovenia by Sander, Folger, Friedman and
Himmelstein, and Cloke, Laura Ristori is herself a trainer in mediation and negotiation techniques and a professional mediator for civil and commercial disputes. At the USIP (United States Institute for Peace) in Washington DC, Ms. Ristori has attended programmes on managing violent conflict and in war to peace transition contexts. Ristori has written articles on competition law and mediation. She is also the co-author of a book on long term commercial contracts forthcoming in November 2016 by Wolters-Kluwers publishing Company.

Dana Rone is a sworn advocate-at-law and a certified mediator practising in Latvia in ‘Danas Rones advokātu birojs’. She is also a lecturer in Turība University giving classes in Civil Procedure Law, Insurance Law and Public Speech. Dana Rone is an active advocate for mediation, presenting scientific publications on this subject, as well as participating in interdisciplinary conferences dedicated to mediation.

Maria Gili Saldaña, having served for more than fifteen years as an assistant professor in Law at Universitat Pompeu Fabra (Barcelona), is now a research assistant at the University and expert trainer at Dispute Management, SL. Marian publishes regularly on the areas of torts, contracts and dispute resolution.

Brian Speers is one of the most experienced commercial mediators in Northern Ireland. He is a managing partner at Belfast law firm CMG Cunningham Dickey Solicitors. A past president of the Law Society of Northern Ireland he has devised and teaches a mediation training programme for solicitors, barristers and judges offered by IPLS at Queen’s University Belfast.

Mercedes Tarrazón, Founding Partner of Dispute Management SL (Barcelona), is a veteran arbitrator and mediator. With a sound knowledge of management and corporate governance, she is a Fellow of the Chartered Institute of Arbitrators both in Arbitration and in Mediation and a Distinguished Fellow of the International Academy of Mediators.

Virgilijus Valancius holds a Doctor of Law (2000) and is currently a Judge at the General Court. He has held a number of judicial and academic positions at the University of Vilnius and at Mykolas Romeris University. He was President of the European Association of Judges (EAJ), Vice-President of the International Association of Judges (IAJ), member of the Consultative Council of European Judges (CCJE), member of the Board of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and member of the Board of Trustees of the Academy of European Law (ERA).

Delphine Wietek is a Senior Legal Advisor within the Legal Services Department of the International Chamber of Commerce (ICC). She is qualified to practise law in Paris and New York and specialises in mediation, international arbitration and compliance.

Aleš Zalar has a degree in law. From 1989 to 2008 he served as a judge. From 1991 to 2007 he was the president of the Basic Court in Ljubljana and later the District Court in
Ljubljana. He was then the EU’s legal consultant for EU law with the Romanian Supreme Court and for mediation with the Croatian Ministry of Justice. From 2008 to 2012 he served as Minister of Justice in the Republic of Slovenia. Currently he is working as a President and ADR expert at the European Center for Dispute Resolution. Since 2012 he is the President of the European Center for Dispute Resolution.
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CHAPTER 1

Introducing Regulatory Robustness Ratings for Mediation Regimes in the EU

Nadja Alexander

§1.01 THE EU AND CROSS-BORDER MEDIATION: SELECTING GOVERNING LAW

As mediation in the EU seeks to claim a larger slice of the cross-border dispute resolution pie, an increasingly important question for legal advisers to ask themselves is: which jurisdiction offers the best legal framework to support a potential future mediation of my client’s dispute?

This book is about the relationship between law and cross-border mediation in the Member States of the European Union. The ability to select the applicable law in international transactions allows well-resourced parties to choose a law tailored to their specific needs. In a survey of 175 businesses across Europe, two-thirds considered the ability to make a choice of law from different legal systems to be an advantage.¹

Consider the situation of a multinational corporation doing business with numerous commercial partners around the globe. The legal division advises on the insertion of a dispute resolution clause with mediation as a central component. But what about the choice of governing law and related matters?

In relation to international trade, research indicates that business people and lawyers typically select places and regions with which they are familiar as the basis for

the governing law clauses; this is referred to as the status quo bias. For example, the lawyer working on a dispute resolution clause for the multinational corporation might select the law of the organisation’s headquarters for all its mediation clauses. Alternatively, she might select another well-known jurisdiction in the region that has been the standard home for governing law in the organisation’s arbitration (not mediation) clauses for decades. Further, if she is trained and practised in the common law method, she may have a bias towards common law jurisdictions. Other factors that are said to influence the choice of law in favour of a particular jurisdiction include the quality of the judiciary, the expertise of the courts in particular types of international disputes, the absence of corruption, the presence of witnesses in the selected jurisdiction and the efficiency and cost-effectiveness of litigation.

But what if these jurisdictions did not have the best laws to support a mediation process? What if, for example, the laws on non-admissibility of mediation evidence in court were unclear? What if the attitude of the courts, while strong and clear in relation to arbitration, remained uncertain and unpredictable in relation to mediation?

Making a choice about the governing law for a mediation clause should never be a default reaction on the part of a legal adviser. Clients expect their advisers to offer reasoned, researched and rational advice. Such advice will take into account a wide range of factors including familiarity and others referred to previously, as well as factors particular to the circumstances of the transaction such as the jurisdiction where the client is located, where the transaction takes place and where a mediated settlement agreement might need to be enforced. Additionally, legal advisers must have a good sense of the law applicable to mediation processes, the possible outcomes in these jurisdictions and how these might support or hinder their clients’ interests. Getting a grasp of the applicable mediation law is no easy task, especially given the:

- relatively short experience of lawyers with cross-border mediation compared to arbitration;
- fast pace of development in the mediation regulatory environment; and
- absence of a uniform mediation regulatory regime, especially in relation to cross-border matters.

This book addresses this issue in two ways. First, the law of mediation in each EU Member State is presented and analysed on a chapter-by-chapter basis: twenty-eight Member States, at the time of writing, and thirty chapters – England & Wales, Scotland and Northern Ireland are presented in separate chapters rather than in one chapter on the UK – to examine their respective mediation regimes in detail. In addition, the book offers a comparative analysis of the mediation regimes of the EU Member States presented by means of a system called the Regulatory Robustness Rating (also referred to as ‘RRR’) System. As the name suggests, the RRR System offers jurisdictions a series of ratings according to the perceived robustness of their regulatory framework in

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\[\text{3. See generally A Bell, \textit{Forum Shopping and Venue in International Litigation} (Oxford: Oxford University Press 2003).}\]
relation to cross-border mediation. The Regulatory Robustness Ratings in this book have been determined by the editors on the basis of the analysis of mediation law offered in each of the jurisdictional chapters.

The RRR System helps legal advisers and other users of cross-border mediation processes to quickly attain an understanding of the main relevant features of the regulatory environment in which the mediation will take place. It does not aim to offer a comprehensive and complete analysis of the law on (cross-border) mediation on a jurisdictional basis. Instead, it identifies potential strengths and weaknesses of the regulatory regime for cross-border mediation and offers a starting point for further targeted research.

§1.02 THE REGULATORY ROBUSTNESS RATING SYSTEM

The Regulatory Robustness Rating (RRR) System is based on a set of assumptions about what makes good mediation law and what makes a jurisdiction attractive for mediation purposes in terms of its regulatory framework (see Table 1.2 the Mediation Star Matrix). It relies on twelve criteria to analyse the regulatory robustness of a jurisdiction’s legal framework for cross-border mediation. These criteria are primarily legal-regulatory in nature. In addition, as the robustness of a legal framework is inextricably linked to its institutions such as courts and dispute resolution organisations, basic institutional and infrastructure criteria relevant to mediation have also been included in the RRR System.

The editors recognise that there will inevitably be additional institutional, political, socio-economic and cultural factors that influence how laws are interpreted and applied. These factors are beyond the scope of the RRR System. However, such data can be accessed through numerous existing analytical reports, and these can be used in conjunction with the RRR.4

Another significant point for readers to keep in mind is that the EU Member States represent not only civil law legal systems (the vast majority) but also the common law systems of England & Wales, Scotland, Northern Ireland (collectively the UK) and Ireland. As a result, there will be fundamentally different approaches to regulating certain aspects of mediation, for example the common law concept of privilege to address insider/court confidentiality as between parties to a mediation is not known to the civil law tradition. Therefore, as Smits’ research indicates, one’s level of familiarity with a particular legal system and one’s potential implicit bias against a different legal system will play at least a subliminal role in the selection of governing law and jurisdiction.5

Regardless of the type of legal system, it is important to clarify how the term ‘law’ is defined here. In the RRR System ‘law’ is understood broadly to encompass diverse regulatory forms beyond legislation. Legislation, case law, practice directions, codes of

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conduct, standards and other regulatory instruments on mediation determine how
mediation is understood and applied by a range of actors, including referring bodies
such as courts, dispute resolution organisations, mediators and legal advisers and by
the parties themselves. Thus the notion of law extends to soft law options and private
contracting (e.g., mediation agreements and mediation clauses) and industry norms
(e.g., codes of conduct, practice standards, and accreditation standards).

This broad understanding of law is consistent with contemporary regulatory
theory, which has shifted its focus from government rulemaking to the context of
institutions and interest groups. Moreover, it is also consistent with the EU Directive,7
which envisages compliance by EU Member States through a wide range of regulatory
forms. The recitals clearly recognise different forms of regulation of mediation includ-
ing industry and institutional regulation (recital 14), specifically referring to the
European Code of Conduct for Mediators and market-based solutions (recital 17).
Recital 16 encourages Member States to ensure that appropriate quality control
mechanisms for mediation services are in place. Article 4 of the Directive requires
Member States to encourage mediators and mediation organisations to adhere to
voluntary codes of conduct and other quality control mechanisms.

§1.03 HOW THE RRR SYSTEM WORKS

The RRR System is based upon twelve criteria and these are set out in detail below.
Jurisdictions are given a star rating of up to five stars (highest score) in relation to each
criterion. So, for example, a country might receive three stars (★★★★) for criterion 1 and
four stars (★★★★★) for criterion 2, two stars (★★) for criterion 3 and so on. A half-star
rating (★) may also be awarded. Not all criteria carry equal weight. Some are likely to
hold greater importance than others for users of mediation. For this reason, a weighting
system has been introduced, with a weighting of three units allocated to high priority
items, a weighting of two units for those considered to be of moderate importance, and
a weighting of one unit for criteria that are desirable but not a priority for users. For
example, the enforceability of mediated settlement agreements is generally considered
a matter of high importance for users, so it receives a weighting of three units.8 In
contrast the congruence of domestic and international legal frameworks is a desirable
regulatory feature but likely to be viewed as less essential from a user’s perspective;
accordingly it receives a weighting of one unit. Therefore, once a star rating is allocated
to a particular criterion, it will be multiplied by the weighting factor to receive the

6. J Black, M Lodge and M Thatcher, Regulatory Innovation: A Comparative Analysis (Cheltenham:
Edward Elgar 2005).
as adopted by the European Parliament and the Council of the European Union on 21 May 2008,
8. See IMI 2016 International Mediation & ADR Survey, available at https://imimediation.org/imi-
2016-biennial-census-survey-results (last assessed 22 Jan. 2017). See also SI Strong, Realizing
Rationality: An Empirical Assessment of International Commercial Mediation, 73 Washington &
Regulatory Robustness Rating for that criterion. Take for example, a criterion with a four-star rating:

- a weighting of one unit would result in a Regulatory Robustness Rating of four points;
- a weighting of two units would result in a Regulatory Robustness Rating of eight points;
- a weighting of three units would result in a Regulatory Robustness Rating of twelve points.

It is important to note that there is no total Rating computed for a jurisdiction. Although this may seem like an obvious next step (i.e., to add up the RRR scores for each criterion), such an approach is likely to divert attention away from the merits of specific criteria in favour of a much less informative, and arguably misleading, overall Rating. The aim of the RRR System is to encourage users and other regulatory stakeholders to look closely and critically at mediation regulatory regimes in order to make informed choices and develop appropriate strategies in relation to the law that governs their mediation. Accordingly, a set of twelve Ratings is presented for each jurisdiction.

The Regulatory Robustness Rating System will now be examined in detail. In the next section, the twelve criteria will be introduced along with the value propositions underpinning them. Following this, the benchmarks for the initial star ratings are provided. This is presented by means of a detailed rubric called the Mediation Star Matrix. Finally, the application of the Regulatory Robustness Rating System as it is used throughout this book is explained.

§1.04 TWELVE CRITERIA OF THE REGULATORY ROBUSTNESS RATING SYSTEM

The twelve criteria upon which the RRR System is based are set out below in tabular form. These criteria and the assumptions underpinning them are explained. In addition, the criteria are weighted according to their importance from a user perspective. The weighting scale is 1 to 3, with the higher number providing a higher weighting. Together these elements form the foundations of the RRR System and inform the Ratings given to each jurisdiction.
Table 1.1  The Twelve Criteria of the Regulatory Robustness Rating System

<table>
<thead>
<tr>
<th>Criterion No.</th>
<th>Descriptor</th>
<th>Underlying Principles</th>
<th>Weighting</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Congruence of domestic and international legal frameworks</td>
<td>Here the view is taken that domestic and international legal frameworks for cross-border mediation are useful and robust if they are congruent rather than wholly or partially separate. In disputing situations where domestic and cross-border elements are present in the same dispute or in related disputes, it would make mediation potentially difficult if different laws were applicable to domestic and cross-border aspects in the same mediation. Mediation promises users the flexibility to address related disputes together in one mediation process and to address issues which may not technically form part of the legal statement of claim. This aspect of mediation is made significantly easier if domestic and international mediation legal frameworks are identical or harmonised.</td>
<td>1</td>
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<tr>
<td>2</td>
<td>Transparency and clarity of content of mediation laws in relation to:</td>
<td>A robust legal framework is considered to be one, which contains mediation law that is readily identifiable and accessible for local and foreign lawyers and users in all four listed content areas. The ease with which foreign lawyers can identify and access the cross-border mediation law of another jurisdiction is highly relevant as foreign lawyers usually have the right to participate in mediation (and this is also the case for arbitration) in jurisdictions other than their own.</td>
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<td>3</td>
<td>Mediation infrastructure and services: quality and access</td>
<td>The greater the access to quality mediation services and information, the more attractive the jurisdiction is considered as a mediation venue in terms of ability of a wide range of users to access, and to be able to afford, suitable mediation services of a high quality. Relevant factors here include:</td>
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<td>Criterion No.</td>
<td>Descriptor</td>
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<td>Weighting</td>
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<tr>
<td>4</td>
<td>Access to internationally recognised and skilled local and foreign mediators</td>
<td>Cross-border mediation comes in all shapes and forms and the needs of its users will vary from case to case. Sometimes parties will select the venue and applicable law from jurisdiction A and the mediator from jurisdiction B. The question may then arise: to what extent can foreign mediators selected by the parties practise in the jurisdiction of the mediation and be recognised under its legal framework? This can be important in jurisdictions in which certain aspects of mediation legislation (such as mediated settlement agreement enforceability options or confidentiality provisions) only apply to mediations conducted by a recognised mediator. According to the RRR system, best practice in mediation means that users mediating in a given jurisdiction have access to an internationally recognised pool of local and foreign mediators, who are: - both appropriately qualified and skilled; and - permitted to work across mediation services in the jurisdiction.</td>
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<td>Criterion No.</td>
<td>Descriptor</td>
<td>Underlying Principles</td>
<td>Weighting</td>
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<tr>
<td>5</td>
<td>Enforceability of mediation and multi-tiered</td>
<td>A robust regulatory framework in relation to mediation and MDR clauses typically features:</td>
<td>3</td>
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|              | dispute resolution (MDR) clauses               | - formal generally applicable regulation (e.g., legislation) specifically supporting the enforceability of mediation and MDR clauses, as is the norm in relation to arbitration clauses;  
- clear, consistent jurisprudence supportive of the enforceability of mediation and MDR clauses. |           |
<p>| 6            | Certain and predictable regulation of:         | Both insider/outsider confidentiality and insider/court confidentiality traverse the interface between the mediation process and the broader legal system. The former deals with the extent to which participants in mediation (insiders) can share information from the mediation with others who did not attend the mediation (outsiders); the latter deals with the issue of admissibility of evidence from the mediation session in subsequent proceedings. The underlying assumption for criterion 6 is that it is desirable to have a uniform approach to mediation participants' rights and obligations in relation to | 2         |</p>
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<th>Criterion No.</th>
<th>Descriptor</th>
<th>Underlying Principles</th>
<th>Weighting</th>
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<td>7</td>
<td>Confidentiality, while at the same time respecting the principle of party autonomy. Furthermore, the integrity of the mediation process requires that participants be held accountable for their behaviour in mediation - for example, that parties participate in good faith and do not engage in behaviour such as misrepresentation or other conduct amounting to a contract defence. To this end, confidentiality provisions must be balanced with certain exceptions. Furthermore, it is important that regulation covers all relevant mediation participants and not just the mediators. In relation to insider/outsider confidentiality, best practice can be achieved by a uniform default approach. A generally applicable default standard (e.g., legislation) generates certainty and uniformity, while allowing parties to make an informed choice to opt-out and make their own variations. Variations can be reflected in the terms of parties' mediation agreements and these are recognised and enforced by the courts. In relation to insider/court confidentiality, there is an overarching need for predictability and certainty in relation to the (non-)admissibility of evidence. For this reason, generally applicable formal mandatory regulation (e.g., legislation) is desirable. Parties cannot opt-out of the general rule. However, certain exceptions provide for accountability of those who participate in mediation processes including mediators, lawyers and parties.</td>
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<td></td>
<td>Informed self-regulation of insider/insider confidentiality</td>
<td>Insider/insider confidentiality relates to the internal conduct of the mediation process and therefore party autonomy and flexibility are higher order principles than uniform regulation. These considerations suggest a self-regulatory</td>
<td>1</td>
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<td>Criterion No.</td>
<td>Descriptor</td>
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<td>approach in relation to criterion 7, which differs from insider/outside confidentiality (criterion 6) and insider/court confidentiality (criterion 6).</td>
<td>A self-regulatory approach permits informed parties to tailor insider/insider confidentiality to meet their procedural needs.</td>
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<td></td>
<td>In so far as there are formal regulations on insider/insider confidentiality in legislation, court rules or other regulatory forms, these are default in nature (i.e., subject to different arrangements by the parties).</td>
<td>It is good practice to draw on institutional 'standard' provisions on insider/insider confidentiality that can be included into, and adapted for, written mediation agreements.</td>
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<td>It is also good practice that written mediation agreements expressly provide for insider/insider confidentiality on a case-by-case basis.</td>
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<td>8</td>
<td>Enforceability of mediated settlement agreements (MSAs) and international mediated settlement agreements (iMSAs)</td>
<td>There is a range of legal forms for MSAs/iMSAs e.g., contract, settlement deed, notarised deed, special mediation deed, arbitral consent award, court order. A robust regulatory system is one which offers users a real choice about the legal form of their mediated settlement agreement and effective options for (expedited) enforceability. To this end, there are clear and transparent criteria that apply for the recognition and enforcement of MSAs/iMSAs in their various forms.</td>
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<td>Criterion No.</td>
<td>Descriptor</td>
<td>Underlying Principles</td>
<td>Weighting</td>
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<td></td>
<td>Impact of commencement of mediation on litigation limitation periods</td>
<td>Mediation is often recommended to parties on the basis that they have nothing to lose in terms of their legal rights and remedies – aggrieved parties can always pursue their rights in court should mediation not result in a resolution. Such promises assume, <em>inter alia</em>, that permitted time periods for parties to lodge their claims do not expire during the course of the mediation with the result that the claim cannot be heard in post-mediation proceedings. In addition, where parties are compelled to comply with mediation clauses, there is a strong argument that this compliance should not prejudice them in terms of the time available to prepare and lodge documents to initiate legal proceedings and comply with other relevant time periods. Finally, allowing limitation periods to run during mediation could have the effect of encouraging respondent parties to participate in, or even initiate, mediation for the primary purpose of delaying initiation of court proceedings in the hope that the limitation period expires before the mediation avenue is exhausted. For these reasons, robust regulatory regimes will provide for the efficient and effective suspension or interruption of legal proceedings/litigation limitation periods without any detriment to the rights of the parties once mediation has commenced. Suspension occurs either automatically or with a simple notification procedure.</td>
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<td>Criterion No.</td>
<td>Descriptor</td>
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<td>10</td>
<td>Relationship of the courts to mediation</td>
<td>Where courts support mediation programmes, judges tend to understand the nature of the mediation process well, and this is likely to be reflected in judicial decisions on mediation issues from enforceability to confidentiality. Accordingly, the relationship of the courts to mediation is a relevant factor when studying regulatory robustness. Jurisdictions would rate well on this criterion if mediation is integrated with, or aligned to, the court system such that most courts have mediation programmes which promote a formal, effective and transparent referral process to mediation.</td>
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<td>11</td>
<td>Regulatory incentives for legal advisers to engage in mediation</td>
<td>Legal advisers play a key gatekeeper role in the development of mediation practice and mediation law. The more experience lawyers have with mediation, the more likely they are to be able to competently draft and interpret mediation clauses, agreements and MSAs and advise clients in relation to mediation law, and the more likely they are to direct appropriate cases into mediation in the first place. To this end a robust regulatory regime offers a range of transparent, highly effective regulatory incentives for legal advisers to inform clients about, and engage with, the mediation process. Incentives comprise both soft and hard regulatory forms and some incentives include sanctions for breach.</td>
<td>1</td>
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<tr>
<td>12</td>
<td>Attitude of courts to mediation (based on case law/jurisprudence)</td>
<td>Regulation is much more than provisions written into a law, a code or a contract. Regulation comes to life through its application by parties, lawyers, and the courts. This criterion considers the extent to which the courts of a given jurisdiction support mediation in terms of:</td>
<td>3</td>
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<tr>
<td>Criterion No.</td>
<td>Descriptor</td>
<td>Underlying Principles</td>
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<td>- generating a clear line of judgments which clarify the law around mediation;</td>
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<td></td>
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<td>- recognising properly drafted mediation and multi-tiered dispute resolution clauses, mediated settlement agreements and other contractual documents;</td>
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<td>- recognising the importance of confidentiality as a central tenet of the mediation process, and</td>
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<td>- other mediation factors.</td>
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</table>

Here a high regulatory robustness rating, reflects a court system that uniformly recognises and is prepared to enforce mediation agreements, MSAs/iMSAs and other mediation protocols and processes. It is difficult for jurisdictions with little or no jurisprudence on mediation issues to achieve a high score on this criterion. To some extent this reflects the nascent nature of mediation law and the uncertainty that this stage of its development necessarily brings with it.
§1.05 THE MEDIATION STAR MATRIX

The Mediation Star Matrix is a rubric that builds on the value propositions set out in the previous section. It sets out benchmarks for the twelve Ratings given to each of the EU jurisdictions throughout this book and communicates expectations of quality around regulatory performance on each of the twelve criteria, thereby setting consistent standards for allocating star Ratings. Readers examining the Regulatory Robustness Ratings of one EU Member State may refer to the Matrix below in order to develop a more coherent understanding of what each Rating means and how it fits into the bigger regulatory picture.

As indicated previously, each of the twelve criteria is allocated a star Rating on a sliding scale from one to five. One star represents the lowest star Rating possible and five stars represents the highest. A description is offered for each possible star Rating (one, two, three, four or five stars) for each of the twelve criteria. There are five different star Ratings for each of the twelve criteria of the Regulatory Robustness Rating System, thus resulting in sixty benchmarking descriptive statements.

Table 1.2 presents the Mediation Star Matrix. On the far left-hand side, the first column identifies the relevant criterion and its allocated weighting as introduced in the previous section. The second column contains the benchmark descriptive statement for an allocation of five stars in relation to its corresponding criterion, the next column a benchmark descriptive statement for four stars, and so on until the sixth and final column, which contains the benchmark descriptive statement for an allocation of one star.
<table>
<thead>
<tr>
<th>Criteria</th>
<th>★★★★★</th>
<th>★★★★</th>
<th>★★★</th>
<th>★</th>
<th>★</th>
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<tbody>
<tr>
<td>1. Congruence of domestic and international legal frameworks WEIGHTING: 1</td>
<td>Specific, comprehensive legal frameworks exist for domestic and international mediation. These frameworks are fully integrated and identical.</td>
<td>Specific, detailed legal frameworks exist for domestic and international mediation. These frameworks are mostly integrated and with high levels of congruence.</td>
<td>Specific legal frameworks exist for domestic and international mediation.</td>
<td>Lack of specific, legal framework for international and/or domestic mediation. Existing frameworks are piecemeal, contain potentially contradictory elements.</td>
<td>Lack of a specific legal framework for both domestic and international mediation.</td>
</tr>
<tr>
<td>2. Transparency and clarity of content of mediation laws in relation to:</td>
<td>The law applicable to mediation is readily identifiable and accessible in all four listed content areas.</td>
<td>The law applicable to mediation is mostly readily identifiable and accessible in most or all of the four listed content areas.</td>
<td>The law applicable to mediation is largely identifiable and/or accessible but not all of the four listed content areas.</td>
<td>The law applicable to mediation is identifiable and/or accessible in some of the four listed content areas. It is however underdeveloped or</td>
<td>The law applicable to mediation is not clear, confusing and difficult to access.</td>
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<tr>
<td>Criteria</td>
<td>5★★★★★</td>
<td>4★★★★</td>
<td>3★★★</td>
<td>2★★</td>
<td>1★</td>
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<tr>
<td>i. how mediation is triggered</td>
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<td>difficult to access in the other areas.</td>
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<td>ii. the internal process of mediation</td>
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<td>iii. standards and qualifications for mediators</td>
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<td>iv. rights and obligations of participants in mediation</td>
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<td>WEIGHTING: 2</td>
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<tr>
<td>3. Mediation infrastructure and services: quality and access</td>
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<td></td>
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<tr>
<td>WEIGHTING: 3</td>
<td></td>
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<tr>
<td>Mediation infrastructure and services are highly developed.</td>
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<tr>
<td>Clear consistent mediation standards provide for effective quality assurance (QA). There is a feedback and complaints system (or a comprehensive series of systems) in place for mediation services. Mediation services are offered independently.</td>
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<tr>
<td>Mediation infrastructure and services are well developed, good quality mediation services and infrastructure. Transparent mediation/QA standards exist for most mediation services but they are not always consistent. There is a feedback and complaints system that covers most mediation services; alternatively most mediation service</td>
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<tr>
<td>Mediation services exist but infrastructure needs development.</td>
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<tr>
<td>Mediation/QA standards lack transparency and/or consistency. Integration with existing dispute resolution structures such as courts and arbitration centres is poor. Feedback and complaints systems do not Function well;</td>
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<tr>
<td>Little if any mediation services or infrastructure. No robust quality assurance in relation to mediation services. While some standards for mediation may exist, they are not transparent and they are difficult to locate for users. No integration with existing dispute resolution structures</td>
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</tbody>
</table>
Criteria | ★★★★★ | ★★★★ | ★★★ | ★ | ★
--- | --- | --- | --- | --- | ---
and also as part of existing dispute resolution structures such as courts and arbitration centres. Users can source and access services with ease. | providing organisations have such a system in place. Mediation services are offered independently and there is some integration with existing dispute resolution structures such as courts and arbitration centres. For the most part mediation services are easily accessible. | mediation service provider organisations but not all. Mediation services not always easily accessible. Potential for confusion for users. | alternatively well-functioning systems operate in only in a few service provider organisations. Mediation infrastructure and services may be confusing for users and/or may be difficult to access. | such as courts and arbitration centres. There are no feedback and complaints systems in mediation service provider organisations. Potential users have difficulty accessing services or are unaware of them. |

4. Access to internationally recognised and skilled local and foreign mediators

WEIGHTING: 2

There is an internationally recognised pool (cluster, group, body) of local and foreign mediators, who are both appropriately qualified and skilled. These mediators are permitted to work across all mediation services in the jurisdiction. Foreign mediators can easily join this pool through recognition of their prior mediator. There is a nationally (and to a limited extent internationally) recognised pool (cluster, group, body) of mediators, who are both appropriately qualified and skilled. Most of the mediators are local, however foreign 'star' mediators are also on the panel. Foreign mediators are permitted to work across most mediation services in the jurisdiction. There is a pool or pools (cluster, group, body) of mediators with varying levels of qualifications and skills. It is fairly straightforward for users to access the local pool; it takes more effort and usually some word-of-mouth recommendations to access foreign mediators. There are numerous pools (clusters, groups, bodies) of mediators listed in these pools are primarily local with virtually no foreign mediators listed. Due to the numerous pools and diversity of standards, it is difficult for users to gain useful information about, and access to, qualified and skilled mediators for cross-border disputes. There are no recognised pool of qualified and/or skilled local and/or foreign mediators. It is difficult for users to find out about, and access, qualified and skilled mediators for international disputes. There are no complaints/feedback/disciplinary body or bodies for users to access. It is difficult for foreign mediators to work in this jurisdiction.
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<th>Criteria</th>
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<td>qualification (recognised in their home country). Usually there is a system of mutual recognition among jurisdictions. Users can easily get information about, and access, this pool. Users have recourse to a well-developed and user-friendly complaints/feedback/disciplinary body (or bodies) regardless of whether the mediator is local or foreign. There is a high level of user awareness about this body.</td>
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<td>There is some uncertainty about how foreign mediators can join, although it is accepted that they can. Users can generally access this pool without difficulty. Users have recourse to a complaints/feedback/disciplinary body (or bodies) for local mediators and usually for foreign mediators (although this last point needs to be clarified on a case by case basis). The level of awareness about this body and its accessibility may vary.</td>
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<td>Foreign mediators can work in most mediation contexts in this jurisdiction. However they are usually not found on the local national register, but are rather one of a small cluster of ‘star’ mediators. Users have recourse to a complaints/feedback/disciplinary body (or bodies) for local mediators, however not usually for foreign mediators. The complaints/feedback/disciplinary body may not be very well-developed yet or may lack user-friendliness; it is not well-known among mediation users.</td>
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<td>Freelance foreign mediators can work in some mediation contexts. However this does not occur often. There may be complaints/feedback/disciplinary bodies associated with certain local mediator pools for users to access. These vary in quality and accessibility.</td>
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*especially in relation to mediation of litigation or court-related matters.*
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<td>5. Enforceability of mediation and multi-tiered dispute resolution (MDR) clauses</td>
<td>Formal generally applicable regulation (e.g., legislation) specifically supporting the enforceability of mediation and MDR clauses (as is the norm in relation to arbitration clauses).</td>
<td>In certain sectors there may be formal regulation (e.g., legislation) specifically supporting the enforceability of mediation and MDR clauses (as is the norm in relation to arbitration clauses). Apart from these sector specific provisions, the general law of contract is applicable and has been well-tested in the courts. This has resulted in a mostly clear and consistent view in jurisprudence and academic commentaries about the application of the general law to support the enforceability of mediation and MDR clauses.</td>
<td>The general law of contract seems to support the enforceability of mediation and MDR clauses. However cases/jurisprudence /academic commentaries are still emerging. There remains uncertainty about specific aspects of drafting these types of clauses to meet general law requirements.</td>
<td>The extent to which the general law of contract supports the enforceability of mediation and MDR clauses is unclear. Academic commentaries either do not address the point or are divided. There are limited or no cases/jurisprudence on this issue.</td>
<td>The law (whether general or specific) as interpreted by courts does not support the enforceability of mediation and MDR clauses. Alternatively courts have reached very different decisions about the applicability of the law on this issue leading to uncertainty and caution in the use of such clauses.</td>
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</table>
6a. Certain and predictable regulation of insider/outsider confidentiality with some flexibility

Insider/outsider confidentiality is subject to formal generally applicable regulation (e.g., legislation) with opt out provisions. This creates certainty and uniformity on this issue, while allowing parties to make an informed choice to opt out and make their own variations.

When parties opt out, they privately regulate insider/outsider confidentiality in their mediation agreement. Such terms in mediation agreements are recognised and enforced by the courts.

Insider/outsider confidentiality is recognised and regulated by the general law and is subject to general law exceptions. The general law of confidentiality might apply; where insider/outsider confidentiality is specified in a mediation agreement, the general law of contract would apply.

In addition, there may be limited sector-specific formal regulation on insider/outsider confidentiality, usually with opt out provisions.

Here one or more of the following scenarios can be found.
1. Formal mandatory regulation of insider/outsider confidentiality, allowing no flexibility. This is generally a policy choice of a particular industry.
2. Formal regulation of insider/outsider confidentiality with opt out provisions.
3. Insider/outsider confidentiality is recognised and regulated by the general law and is subject to general law exceptions. Many mediation agreements include a

Here one or more of the following scenarios can be found.
1. Formal mandatory regulation of insider/outsider confidentiality allowing no flexibility.
2. Formal regulation of insider/outsider confidentiality with opt out provisions.
3. General law applies to insider/outsider confidentiality.

There is no significant alignment in the content of these various regulatory approaches. As a result there is much diversity in the regulation of this issue.

Insider/outsider confidentiality is neither expressly subject to formal regulation, nor has it been recognised by the general law in the sense that courts have applied the general law on confidentiality to a mediation setting.

Contractual provisions in mediation agreements purporting to regulate insider/outsider confidentiality have either not been the subject of court scrutiny or have been subject to diverse judicial views. There is no consensus in the academic literature on this point.
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<td>Most mediation agreements include a standard provision on insider/outside confidentiality. Importantly, the different regulatory approaches here are generally aligned in terms of content. This leads to a sense of comfort around consistency of practice. However contractual provisions are subject to variation and judicial interpretation may also vary, leading to some uncertainty on this issue. Nevertheless, the courts generally recognise insider/outside confidentiality. provision on insider/outside confidentiality. As a result there are diverse regulatory approaches to this issue and some resulting uncertainty and unpredictability in relation to the application of insider/outside confidentiality. While the courts generally recognise insider/outside confidentiality, the different regulatory frameworks and/or provisions lead to equally diverse judicial interpretations. and a lack of transparency. Academic and judicial opinions vary.</td>
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<td>6b. Certain and predictable regulation of insider/court confidentiality For 6a. and 6b. together*; WEIGHTING: 2</td>
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<td>✡✡✡✡✡</td>
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*Note that 6a and 6b are weighted together as there is often a strong regulatory connection between the two e.g., they may be covered by the same or similar provisions.

In relation to insider/court confidentiality, there is an overarching need for predictability and certainty in relation to the (non-) admissibility of evidence. For this reason formal generally applicable mandatory regulation (e.g., legislation) for all mediation participants exists. Parties cannot opt out of the general rule. However, certain exceptions provide for accountability of those who participate in mediation processes including mediators, lawyers and parties.

There is specific formal mandatory regulation in some sectors for mediation participants – all of which are similar in terms of content i.e., their approach to admissibility of mediation evidence. In other sectors, there is formal regulation, which is default in nature and therefore subject to variation (opt out) by parties. Otherwise, regulation varies according to the contents of mediation agreements, which usually contain standard institutional clauses on this issue. Mediation agreements are recognised by, and interpreted according to, the general law.

There is limited specific formal mandatory regulation on this issue. Where formal mandatory regulation exists, it is usually only in relation to one mediation participant, such as the mediator. Otherwise specific formal regulation (either general or sector-specific regulation) is default in nature and therefore subject to variation by parties.

In all other cases, the general law applies to interpret mediation agreements, which often contain standard institutional clauses on this issue. Therefore there is potential diversity on how this issue is regulated and some resulting uncertainty.

For the most part, the general law applies. There is little specific formal regulation on this issue. Insofar as specific formal regulation exists, it is mostly default in nature and therefore subject to variation by parties.

For the most part the general law applies and it varies according to the contents of mediation agreements.

There is no significant alignment in the content of these various regulatory approaches. As a result there is much diversity in the regulation of this issue and a lack of transparency.

Academic and judicial opinion varies.

Insider/court confidentiality is neither expressly subject to formal regulation, nor has it been recognised by the general law in the sense that courts have applied the general law on confidentiality in a mediation setting.

Contractual provisions in mediation agreements purporting to regulate insider/outsider confidentiality have either not been the subject of court scrutiny or have been subject to diverse judicial views.

There is no consensus in the academic literature on this point.
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<td>7. Informed self-regulation of insider/insider confidentiality</td>
<td>Importantly, all regulation on this issue is generally aligned in terms of content. This leads to a sense of comfort around consistency of practice, however there is the potential for a lack of uniformity on this issue. and unpredictability in relation to the application of insider/court confidentiality. While the courts may recognise insider/court confidentiality, the different regulatory frameworks and/or provisions lead to diverse judicial interpretations.</td>
<td>Apart from a few (largely policy-based) exceptions, insider/insider confidentiality is subject to party autonomy. It is increasingly common practice that written mediation agreements expressly regulate insider/insider confidentiality in different ways. For specific sectors, there are formal mandatory provisions that do not allow for party variance (e.g., in family mediation); however in other sectors there is considerable mandatory formal regulation of insider/insider confidentiality, which does not permit parties to tailor insider/insider confidentiality to meet their procedural needs.</td>
<td>Insider/insider confidentiality is subject to formal general mandatory regulation (e.g., legislation.) Generally speaking, parties are not able to tailor insider/insider confidentiality to suit their needs.</td>
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<td>Insofar as there are formal regulations on insider/insider confidentiality in legislation, court rules or other regulatory forms, these are default in nature i.e., subject to different arrangements by the parties. There are various institutional &quot;standard&quot; provisions on insider/insider confidentiality that can be included, and adapted for, written mediation agreements. It is considered good practice that written mediation agreements expressly provide for insider/insider confidentiality on a case by case basis.</td>
<td>deal with insider/insider confidentiality – using standard or individual clauses. However the practice of insider/insider confidentiality being determined on a verbal, ad hoc basis by the mediator still occurs.</td>
<td>there are no such provisions and insider/insider confidentiality is subject to general contract law and therefore party autonomy. Written mediation agreements may expressly deal with insider/insider confidentiality. However this is not standard practice. Mediators' practice varies in terms of how insider/insider confidentiality is regulated (e.g. whether it is written into the mediation agreement or dealt with verbally on an ad hoc basis).</td>
<td>In practice areas without mandatory formal regulation, insider/insider confidentiality is frequently determined on a verbal, ad hoc basis by the mediator without a specific written provisions in the mediation agreement. Of course in some sectors it is possible for a standard or individual written provision to be inserted into the mediation agreement. However the practice on this is limited.</td>
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<td>8. Enforceability of (MSAs) and international mediated settlement agreements (iMSAs)</td>
<td>There is a range of legal forms for MSAs/iMSAs e.g., contract, settlement deed, arbitral consent award, court order. There are clear and transparent criteria that apply for the recognition and enforcement of MSAs/iMSAs in their various forms. When documented in the appropriate legal form, MSAs/iMSAs are recognised by the law and are directly enforceable in the courts without further preconditions. When documented in the directly enforceable form, the ability to challenge MSAs/iMSAs is restricted.</td>
<td>There is a range of legal forms for MSAs/iMSAs e.g., contract, settlement deed, arbitral consent award, court order. Criteria applicable for the recognition and enforcement of MSAs/iMSAs in their various forms are mostly clear and transparent. When documented in the appropriate legal form, MSAs/iMSAs are recognised by the law and are generally enforceable in the courts subject to certain pre-conditions. The scope for challenges to MSAs/iMSAs depends on the legal form adopted.</td>
<td>There is a limited range of legal forms for MSAs/iMSAs e.g., contract, arbitral consent award. Criteria applicable for the recognition and enforcement of MSAs/iMSAs depend on the legal form chosen and vary in terms of clarity and transparency. When documented in the appropriate legal form, MSAs/iMSAs are generally recognised by the law and are generally enforceable in the courts. The scope for challenges to the enforcement of MSAs/iMSAs depends on the legal form adopted.</td>
<td>There is a lack of clarity and transparency in relation to the legal forms available for MSAs/iMSAs. Criteria applicable for the recognition and enforcement of MSAs/iMSAs are also unclear. There is inconsistency in the applicable law and/or its interpretation and application by the courts. The legal status of the different legal forms for MSAs/iMSAs is unpredictable. Legal challenges to the enforceability of MSAs/iMSAs are common practice.</td>
<td>MSAs/iMSAs cannot be enforced or they are very difficult to enforce requiring extensive court applications or similar procedures. Legal challenges to the enforceability of MSAs/iMSAs are common practice and are often successful.</td>
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<td>Criteria</td>
<td>9. Impact of commencement of mediation on litigation limitation periods</td>
<td>10. Relationship of courts to mediation</td>
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<td>WEIGHTING: 1</td>
<td>Commencement of private and court-related mediation suspends legal proceedings/litigation limitation periods without detriment to parties. Suspension* occurs either automatically or with a simple notification procedure. * Here 'suspension' includes 'interruption' in a legal sense.</td>
<td>Mediation is integrated with/aligned to the court system overall – virtually all courts have mediation programmes with a formal, effective and transparent referral process to mediation.</td>
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<td>Commencement of court-related mediation suspends* most legal proceedings/litigation limitation periods without detriment to parties. Commencement of private mediation may suspend legal proceedings/legal limitation periods without detriment to any party if pre-conditions are met. * Here 'susends' also means 'interrupts' in a legal sense.</td>
<td>Mediation is integrated with/aligned to many or most courts in the jurisdiction, however there are notable gaps. Where mediation programmes exist, they offer a formal, effective and transparent referral process to mediation.</td>
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<td>Commencement of private or court-related mediation may suspend* litigation limitation periods, but only after action is taken by parties/legal advisers to ensure as such. Some inconsistency in regulation may exist. * Here 'suspend' also means 'interrupt' in a legal sense.</td>
<td>Courts are largely supportive of mediation but most lack well developed mediation programmes with a formal, effective and transparent referral process to mediation. As mediation is voluntary, courts lack a critical mass of referrals to mediation.</td>
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<td>The rules applying to the impact of the commencement of mediation on litigation limitation periods are inconsistent and lack transparency. In addition, application of the applicable rules is largely discretionary and/or inconsistent in application. Initiative must be taken by parties or legal advisers.</td>
<td>While some courts are supportive of mediation, others are indifferent to mediation. Most courts lack procedures to facilitate or refer cases to mediation.</td>
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<td>Mediation has no effect on litigation limitation periods. Post-filing, parties risk prejudicing their legal rights or enduring other negative consequences for litigation by engaging in mediation.</td>
<td>Courts are indifferent to or even discourage mediation. They lack procedures to facilitate or refer cases to mediation.</td>
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Nadja Alexander §1.05
| Criteria | ★★★★★ | ★★★★ | ★★★ | ★ | ★
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<p>| 11. Regulatory incentives for legal advisers to engage in mediation/attitude of the legal profession to mediation |
| WEIGHTING | 1 | | | | |
| There is a range of transparent, highly effective regulatory incentives for legal advisers to inform clients about, recommend in appropriate cases, or otherwise engage with, the mediation process. The legal profession responds positively to the incentives and has embraced mediation as a dispute resolution tool in appropriate cases. | There is a range of hard and soft regulatory incentives to encourage legal advisers to engage with the mediation process. Incentives vary according to their effectiveness. Reasons for this may include: their recent introduction, lack of sanctions, lack of awareness etc. For the most part the legal profession responds positively to most of the incentives. Generally the legal profession has a positive attitude to mediation as a dispute resolution tool in appropriate cases. | There is a limited range of mainly soft regulatory incentives to encourage legal advisers to engage with the mediation process. Insofar as there are hard regulatory incentives, these tend to have limited impact on practice – e.g., because there are no sanctions for breach or because they are discretionary so that legal advisers are not required to comply with them. Overall, no direct disadvantage or sanction for non-compliance with regulatory incentives. The attitude of the legal profession is mixed in relation to mediation as | Very few incentives for legal advisers to inform clients about, recommend in appropriate cases, or otherwise engage with, the mediation process. Incentives are not transparent and largely ineffective. Incentives are generally in soft regulatory form. There remains significant resistance and/or indifference among members of the legal profession in relation to mediation as a dispute resolution tool. A minority of lawyers actively promote mediation. | No incentives for legal advisers to engage in mediation. There is no interest among members of the legal profession in relation to mediation as a dispute resolution tool. There is no promotion of mediation within the legal profession. |</p>
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<td>12. Attitude of courts to mediation</td>
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<td>Courts are considered pro-mediation.</td>
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<td>Court decisions and jurisprudence show that courts uniformly recognise</td>
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<td>and are prepared to enforce mediation agreements, MSAs/iMSAs and other</td>
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<td>mediation protocols and processes that comply with the regulatory</td>
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<td>requirements.</td>
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<td>Courts, including higher level courts routinely include comments in</td>
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<td>speeches and other public communications to indicate their active</td>
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<td>support for mediation.</td>
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<td>Courts are considered pro-mediation.</td>
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<td>Many courts have demonstrated through court decisions/jurisprudence</td>
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<td>that they recognise and are prepared to enforce mediation agreements,</td>
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<td>MSAs/iMSAs and other mediation protocols and processes that comply</td>
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<td>with the regulatory requirements.</td>
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<td>Increasingly, court and judges will refer to mediation in public</td>
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<td>communications in a way which indicates their support for the process.</td>
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<td>Generally courts and/or judges are considered pro-mediation.</td>
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<td>Some courts and/or judges have indicated through court decisions/</td>
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<td>jurisprudence that they recognise and are prepared to enforce</td>
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<td>mediation agreements, MSAs/iMSAs and other mediation protocols and</td>
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<td>processes, provided they are drafted appropriately and comply with the</td>
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<td>law.</td>
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<td>Thus there is some evidence to indicate the robustness of the regulatory</td>
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<td>regime.</td>
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<td>There have been few opportunities for the courts to decide cases on</td>
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<td>issues dealing with mediation.</td>
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<td>Decisions have not been consistent on issues. OR</td>
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<td>There are still many issues upon which the courts have not</td>
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<td>pronounced.</td>
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<td>Some individual judges (but not the courts generally) have made</td>
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<td>comments in public to indicate their support for mediation.</td>
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<td>While the general mood is positive about the future of mediation,</td>
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<td>there is little evidence to</td>
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<td>There have been no opportunities for the courts to decide cases on</td>
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<td>Judges and the courts have not made public comments to indicate</td>
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<td>support for mediation.</td>
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<td>As a result, there is much uncertainty about the application and</td>
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<td>interpretation of mediation regulation.</td>
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<td>Criteria</td>
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<td>Where court decisions have exposed a loophole or weakness in the regulatory regime, regulatory actors (e.g., law and policy makers) usually take note and attempt to address the issue.</td>
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<td>A number of courts and judges have made comments in public to indicate their support for mediation.</td>
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Chapter 1: Introducing Regulatory Robustness Ratings §1.05
§1.06 THE REGULATORY ROBUSTNESS RATING SYSTEM IN ACTION

Having explored the thinking, logic and structure supporting the Regulatory Robustness Rating System, it is useful to turn to its application in practice.

As indicated previously, a Regulatory Robustness Rating Analysis has been created for each Member State of the EU by the editorial team and is located at the start of every jurisdiction’s chapter. It is presented in a tabular form and you will notice that there are four columns:

- The far left hand column with the heading Criterion identifies each of the twelve criteria, numbered 1 through to 12.
- The next column with the heading Jurisdictional Description offers a short statement on how the jurisdictions in question deal with that criterion. This is a very brief and basic description that enables the RRR to be presented in a tabular form so that readers can benefit from an overview of the jurisdiction’s regulatory framework.
- The column entitled Star Score and Weighting contains the star rating with anywhere between 1 and 5 stars. It also indicates the weighting given to the criterion and this is indicated by the numeral 1, 2 or 3.
- The far right and final column calculates the jurisdiction’s Regulatory Robustness Rating (RRR) in relation to this criterion. This is done by multiplying the star score with the weighting score.

Here England and Wales is used as an illustration in relation to the first criterion (see Table 1.3 below). In the leftmost column the first criterion, ‘Congruence of domestic and international legal frameworks’ is identified. In the next column the jurisdictional description highlights the lack of congruence of domestic and international legal frameworks for mediation. This description leads to a star score of three (3), which is noted in the third column. Readers wanting to better understand the difference between a two and a three star rating on this criterion, or those who are curious about what might be needed to move England and Wales up to four stars, can refer to the Mediation Star Matrix (Table 1.2) set out previously.

Also noted in the third column below the star rating is the allocated weighting for this criterion. In this case the allocated weighting is one (1) indicating that while congruence of domestic and international legal frameworks for mediation is a relevant factor contributing to the regulatory robustness of a mediation regime, it is typically perceived as a lower priority aspect of mediation regulation compared with other criteria that are allocated a weighting of two or three. Of course where users of the RRR System would consider this criterion to be of a higher priority, they would simply need to change the weighting of one to two or three units as appropriate; the final Rating in the next column would then be computed according to the higher weighting. In this way, the RRR System can be tailored to the needs and interests of those employing it regardless of whether they are lawyers, commercial parties, mediators, judges, lobby groups, or law and policy-makers.
The final column on the far right-hand side of the table sets out the RRR score for
the first criterion by multiplying the star score and the weighting from the previous
column. Here the calculation is: 3 x 1 = 3. Thus 3 is the Rating (RRR) given to England
and Wales in relation to the congruence of domestic and international legal frame-
works for mediation.

Table 1.3 Extract from the Regulatory Robustness Rating of England and Wales¹⁰

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Jurisdictional Description (England and Wales)</th>
<th>Star Score and Weighting</th>
<th>RRR</th>
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<tbody>
<tr>
<td>1. Congruence of domestic and international legal frameworks</td>
<td>General law is applicable to domestic and international mediation, with some legislation only applicable to cross-border mediation. Therefore, the legal frameworks for cross-border and domestic mediation are partially integrated and partially separate. Moreover the absence of a specific and comprehensive legal framework for mediation can lead to some uncertainty about applicable law.</td>
<td>★★★</td>
<td>3</td>
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Readers will note that there is no overall Rating; the reasoning for this is as follows. Providing jurisdictions with an overall numerical Rating would turn into the RRR into a competition. Consequently, the readers’ attention would be to scrutinise the overall score only, and less attention would be paid to the merits of the individual criteria stated. The RRR is not a competition. It is a tool for analysis and accordingly it is important to examine the individual criteria and the star scores and weightings allocated to each criterion. The short descriptions and Ratings allocated to each criterion offer a structured overview of mediation law that enables its readers to quickly grasp the main features and issues relevant to a particular jurisdiction. Using this book, readers are better-placed to undertake an informed exploration of cross-border mediation law.

Legal advisers may factor an RRR analysis into their choices about governing law when drafting mediation clauses and other agreements. For example, lawyers looking to identify suitable governing laws for their clients’ mediation clauses might use the RRR System to identify three jurisdictions with high Regulatory Robustness Ratings in relation to the enforceability of mediation clauses and other regulatory factors they consider important for their client. The RRR System can thus provide a starting point for further research to look more closely at these jurisdictions with the goal of identifying a robust governing law and jurisdiction for a mediation clause. As explained previously, other non-regulatory factors specific to the clients’ interests will also be

---

¹⁰. For the full Regulatory Robustness Rating on England and Wales see Chapter 9.
relevant in the final choice of law and jurisdiction, and these should be considered alongside the RRR System.

In concluding this chapter, it is important to recall that the Regulatory Robustness Ratings are derived from the information found in the relevant chapters. Accordingly, readers are able to follow how the various scores have been calculated and they may take this contextual information into account when interpreting the Ratings.

Looking to the future, as legal frameworks for cross-border mediation develop around the world, so the Regulatory Robustness Ratings proposed in this book will require amendment. This highlights another application of the RRR System, namely as a monitoring and research tool for law- and policy-makers in the field of cross-border mediation.
INTRODUCTION

Deborah Masucci
Chair, IMI Board Resources Committee, Survey Task Force
Associate General Counsel, Hess Corporation

It is with great pleasure to introduce the 2016 International Mediation & ADR Survey, which builds on the series launched in 2016 by the International Mediation Institute (IMI). The survey reflects the perspectives of mediation and ADR stakeholders around the world, including mediation practitioners, clients, advisors, and governments. It is a vital tool for understanding the landscape of mediation and ADR practices globally.

The survey results highlight the need for continued dialogue and collaboration among stakeholders to improve the effectiveness and accessibility of mediation and ADR. It is hoped that these findings will inform and inspire the profession as it moves forward into the future.

The IMI Board will use all this information to develop its short and long term strategies and action plans. The results will be disseminated in a comprehensive report, which will be released in late 2016. The report will provide insights into the current state of mediation and ADR, including trends and best practices.

We encourage all stakeholders to participate in the survey and to share their perspectives with the broader mediation community. Together, we can work towards a more collaborative and effective future for mediation and ADR.

Deborah Masucci
Chair, IMI Board Resources Committee, Survey Task Force
Associate General Counsel, Hess Corporation
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<td>Mediator’s Role/Features/Overview</td>
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<td>Growing Mediation</td>
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The 2016 Census of Conflict Management Stakeholders and Trends commissioned by the International Mediation Institute ("IMI") collects and presents statistics and insights of stakeholders regarding Mediation and Appropriate Dispute Resolution ("ADR") Awareness. The survey is believed to be the first ever international census of the mediation/ADR community to date.

The survey addresses the needs of business & advisors, mediators & providers, educators, government, NGOs and other stakeholders in using and/or practicing mediation and ADR. The survey further encompasses market observations on the effectiveness of IMI as an organization overall and whether there are areas of further development in professionalising mediation and also benefitting its supporters.

The survey provides a very useful snapshot of the state of the international market for mediation. The report thus pays focused attention to the respondent profile in the first instance, not only to explain the survey methodology but also to highlight market trends. Although detailed statistics are provided as entered by the respondents in the survey, general summary pages are also provided in the front of each section for ease of review as follows:

- Executive Summary (slide 5)
- Respondent Profile (slide 6)
- Managing Work and Conflicts (slide 13)
- Relevant Factors in Mediation Practices (slide 21)
- Mediator’s Role/Features/Overview (slide 28)
- Growing Mediation (slide 35)

Deep appreciation and thanks are extended to the following IMI volunteers constituting part of the IMI Survey Task Force: Khory McCormick (Australia), M. Salman Ravala (New York), Christiane Rosenbaum (New York), and Emma Ewart (New Zealand).
The key findings from this census survey (including demographics) are:

Stakeholders in international mediation (Definitions, see slide 10)
- Respondents are a significant sample (813) representing 67 countries and speaking 49 different languages (pp. 8-9);
- 73% of respondents are over the age of 45 (35% of these are over the age of 60) (p. 11);
- Women are proportionately more represented in mediation (40%) than arbitration (14% according to public surveys)(p. 12);
- 58% of respondents have legal backgrounds, deriving in largest part from those stakeholders who sit around a mediation table – users, advisors, and mediators (pp. 10, 15)
- Regional views differed in significant respects throughout the survey, with Latin America and Africa proportionately more optimistic than North America and Asia on various fronts

Mediators
- 48% of mediators are self-employed; 70% of mediators engage in some other profession in addition to mediation (p. 30)
- More women mediators solely mediate (18% female, 12% male) and mediate solely on a volunteer basis (17% female, 6% male) (pp. 30-31));
- 55% of mediators earn less than $50,000 USD equivalent performing mediation services only (p. 31);
- Marked differences exist between IMI Mediators and mediators overall with respect to motivators and financial standing (p. 31, 33)

Views on international mediation
- Users are dramatically more familiar with mediation (50%) than their advisors perceive them to be (6%) (p. 17);
- Advisors are more familiar with mediation (40%) than Users perceive them to be (30%), and recommend mediation more often (70%) than Users perceive they do (47%) (p.17);
- “Asking Peers” remains the predominant method for advisors to choose mediators (53%), and objective search engines one of the lowest (4%)

Mediation practices
- The “qualifications and experience of a mediator” is the most important factor (75%) for Users to know concerning their work in conflict management;
- “User views” are the most important factor (75%) for all other stakeholders (pp. 23-24);
- Regarding mediation processes, the lowest rates of extreme importance are the “time mediation takes to resolve a conflict”(36%) and success rates (41%). Enforcement of mediation settlements was of extreme importance for 53% of respondents (56% for users specifically) (p. 25);
- The extent of use of mediation does not hold extreme importance for any stakeholders other than government (52%) (p. 26)

Growing mediation
- 83% of respondents stated that users would have at least some interest in web-based/automated tools for mediation over the next 5 years, but expressed uniform hesitation at the success these tools would have to resolve conflicts over face-to-face interactions (p. 37);
- Only 17% of respondents stated that legislators had any familiarity with mediation; 18% stated that the executive branch had any familiarity with mediation (p. 38);
- 41% of respondents believe that the judicial branch recommends mediation most or some of the time (p. 39);
- Educators perceive a large student interest in mediation (53%), though course offerings (according to students) appears to be rare (54%) (p. 40);
- 63% of providers stated that interest in mediation training courses will increase over the next 5 years (p. 41).
Overview

This survey was conducted in Q4 2015/Q1 2016, through an online questionnaire. The response rate was high.

The respondent base of this survey is more representative than other stakeholder surveys conducted to date with respect to conflict management in general and mediation in particular. With 813 total respondents, the respondent profile includes a good snapshot of market segments, including a significant number of users, advisors, service providers, educators, students and government/non governmental organization (NGO) stakeholders represented in addition to the majority demographic of mediators. These market segments represent 67 countries speaking 49 different languages worldwide.

The translation of the survey into Portuguese produced marked additional responses and gave a strong diversity quality to the survey. Future surveys may well benefit from additional translations to even better improve results.

From a gender perspective, the size of the female respondent pool (40%) suggests a significantly larger involvement in consensual decision making activities than the comparative pool involved in arbitrations (see, e.g., 16% women respondents to 2013 CCA/Straus Institute Survey of US arbitrators; 14% women respondents to 2015 Chartered Institute of Arbitrators survey). This may be due to increased educational opportunities or lower barriers to entry, though survey results demonstrated that professional barriers – across the board but particularly among women – may still be preventing women mediators from earning a sustainable income through solely conducting mediations.

Age demographics also reflect the continued dominance of older men (aged 60 and over) particularly in North America and Australia/New Zealand in the mediation sector.

The largest enthusiasm for mediation-related issues come from the younger populations, the largest majorities of which are based in Africa and Latin America.

*For Respondent/Stakeholder Definitions, see page 10
Respondent profile

Significant sample: The survey sample represents a diverse and global cross section of respondents representing all ADR stakeholders. 813 stakeholders responded to the survey from 6 regions, representing 67 countries and speaking 49* different languages.

Although the survey was conducted in English, a Portuguese translation was also circulated, which generated 55 additional native Portuguese-speaking respondents.

This survey was conducted in the period from end of 2015 to the beginning of 2016.

*62% of respondents have English as their native language
Large and Diverse Country representation

For regions comprising a large number of countries, no cultural specific reflections were possible.

For example, Europe, which comprises 34% of the total number of respondents, is represented by 29 diverse and culturally distinct countries. Asia, comprising 14% of total respondents, is represented by 15 countries.

Latin America, comprising 5% of total respondents, is represented by 7 countries.

The Middle East, comprising 2% of respondents, is represented by 6 countries, while Australia/New Zealand (5%) is represented by 4 countries.

In contrast, North America, which comprises 35% of the total number of respondents, is comprised of 4 countries.*

*countries listed as self-reported

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*countries listed as self-reported
In order to understand and differentiate between viewpoints, respondents were asked how they were connected to mediation (respondents were self defined and not otherwise verified through the survey):

• **Users.** Those who may potentially use mediation (“Users”) make up 7% of respondents, the largest groups of which divided between 10% of North America, 15% of the Middle East*, 7% of Australia/NZ, 6% of Asia and 5% of both Africa and Europe.

• **Advisors.** Those who (may) recommend using mediation as external counsel, consultant or User representative (“Advisors”) make up 10% of respondents, with the largest groups divided between Africa (13%), Asia (12%), Europe (12%) and Latin America (8%).

• **Mediators.** Those who conduct mediations (“Mediators”) make up the majority (53%) of respondents, with the largest groups divided between Australia/NZ (65%), North America (59%), Europe (52%), Asia (51%), Latin America (46%) and the Middle East (30%).

• **Educators.** Those who teach mediation or train mediators and/or mediation advocates/advisors (“Educators”) had the largest distribution of Educators come from Latin America (14%), Africa (13%), Asia (13%), and Europe (12%).

• **Providers.** Those who arrange and administer mediation, or provide other products/services to the ADR industry (“Provider”) had the largest distribution of Providers come from the Middle East* (15%), Africa (8%), Latin America (7%), and Asia (6%).

• **Students.** Those who study mediation (“Students”) had the largest distribution of students come from Africa (8%), Latin America (5%), Europe (3%), and Asia (3%).

• **Other stakeholders.** Those who are otherwise interested in mediation as a conflict management stakeholder (e.g., government, NGOs, etc.) (“Stakeholders”) were only prevalent in Latin America (7%), Asia (5%), North America (1%) and Europe (1%).

*small base
Age is a contributing factor in the level of interest in conflict management. The total range of ages of respondents were 25 or younger (2%), 25-45 (23%), 45-60 (38%), and over 60 years of age (35%). North America had the oldest category of respondents (56% over the age of 60), followed by Australia/New Zealand (53% over the age of 60) and the Middle East (50% over the age of 60).*

The largest representation of young respondents aged 45 and under came from Africa (40%) and Latin America (38%), followed by Asia (35%).

*small base

In terms of stakeholders, students generally made up the youngest population, followed by advisors and providers. Users and other stakeholders such as government/NGOs, fell in the mid-range while mediators and educators made up the most senior populations.

**Female population generally younger.** 71% of women respondents are ages 25-60 as opposed to 52% of men in the same age group. Only 27% of women are aged over 60 compared to 45% of men in this respondent pool.

**Youngest stakeholders**
- Students
- Advisors
- Providers

**Most senior stakeholders**
- Educators
- Mediators

**Midrange stakeholders**
- Users
- Government/Other
Predominantly male response. The majority of all respondents were male (60%).
Regionally, Australia/New Zealand had the highest proportion of women respondents (56%), followed by North America (42%) and the Middle East (50%).*

The largest disparity in genders exists in Latin America (71% male), Asia (68% male), and Africa (63% male), with Europe not far behind (62% male).

*small base

Stakeholders generally lack gender diversity. With one notable exception, the majority of all stakeholder groups were male. Females constitute the majority of Provider respondents (51%), with the next highest female populations coming from governments/other (44%), and Advisors (42%). Also noteworthy is that the largest disparity between genders exists among student respondents (69% male), with the next largest disparity (64% male) shared between users, mediators and educators.

Government/Other

55% 44%
Male Female

Providers

Students

Users

Advisors

Mediators

Educators

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Overview

Although respondents overall indicate a large array of professional backgrounds, the majority of professionals (58%) come from a legal background, represented most strongly by users and advisors, followed by mediators and providers. The largest respondent pool amongst all stakeholders are self-employed.

In managing work and conflicts, there is a clear perception differential between Users and the advisors who represent them both as regards conflict management in general and mediation in particular. Users in this respondent pool may qualify in the category of “sophisticated users”, i.e., being very familiar with the main forms of conflict management and resolution -- including mediation -- dramatically more than they were given credit for by their advisors. Though advisors perceive themselves to know more about consensual decision making tools than their clients, and perceive themselves as regularly recommending mediation, clients experience this differently. This suggests a significant disconnect in perceived strategy alignment on how to manage conflicts and the role mediation might play therein.

Survey results demonstrate the importance of obtaining user views in an area in which their views may differ – at times dramatically – from the remainder of the stakeholder populations. One such area is the marked difference in views of the potential breadth of use of third party facilitators depending on the parties (business, individual, government, NGO) to the conflict. The narrower use of a competent professional for business and individual disputes by users reflects perhaps how mediators transport themselves into market segments, i.e., suggesting that mediation skills may be brought into businesses and governments internally for certain types of disputes, but not the mediation itself through use of an independent third party.
Large diversity in professions. Of 815 overall respondents, 944 responses were received representing 28 different professions (suggesting multiple educational qualifications per individual). By far the largest representation (58%) is among the legal profession (543 individuals). 93 individuals (10%) responded that they have a business background, followed by 60 individuals (6%) with a human resources/labor background. 3% (each) of respondents represent social work (33), psychology (30), education (27), political science (27), and accounting/banking (24). The remaining 10% of responses are split as shown in the adjoining Chart, with 2% of respondents describing their professional background as “mediation”.

More homogenous negotiating tables. Despite a wide array of professional backgrounds, the least diverse of the stakeholders were those who typically sit at the negotiating table. Users and advisors had the largest representation of legal backgrounds (76% and 80% respectively), followed by mediators and providers (69% each). Although the largest proportion for (government) stakeholders was also legal (33%), strong showings existed also for human resources (22%), political science (11%), and “other” professions (22%). Students were perhaps the most diverse in backgrounds (61% legal, 30% “other”), followed by educators (63% legal, 24% “other”).

There were no appreciable differences amongst genders or regions in this category.
In order to understand the support network of the respondents they were asked about how and where they were employed:

- There was a clear trend from a majority of respondents who were either self-employed (35%) or working for a law firm or other consultancy (26% of respondents).
- Almost half of self-employed respondents were mediators (48%), followed by educators (24%) and students (20%).
- The largest proportion of providers were employed by government (27%), followed by consulting firms (20%), and non-profit organizations (17%).
- The largest proportion of “other” stakeholders are employed by government (27%), followed by nonprofit organizations (22%).
Perceptions between advisors and their clients varied (at times dramatically) with respect to the level of knowledge possessed about ADR and mediation:

• Advisors perceive their clients to be markedly less familiar with mediation (6%) and conflict management (7%) than users themselves feel about mediation (50%) and conflict management (47%).

• Advisors also had much higher perceptions of their own familiarity both with conflict management in general (49%) and mediation (40%) than client users had about their advisors—perceiving that 46% of advisors were exceedingly familiar with conflict management while perceiving that only 30% of advisors were exceedingly familiar with mediation.

• User respondents who stated they are “exceedingly familiar” with mediation (50%) outnumber their advisors (40%).

• Advisors overwhelmingly felt that knowing how best to use mediation as part of their work was very valuable (78%).

• However, in terms of recommending mediation, Users responded that their advisors recommend mediation less than half of the time (47%), while advisors responded that they recommend mediation the predominant majority of the time (70%). The results suggest a significant disconnect in perceived strategy alignment on how to manage conflicts and the role mediation might play therein.

Perceptions regarding suggesting mediation:

- Users who regularly recommend mediation
- Perceptions regarding Users
- Perceptions regarding Advisors

Users
- "Exceedingly Familiar" with Mediation
- "Exceedingly Familiar" with Conflict Management

Advisors
- "Exceedingly Familiar" with Mediation
- "Exceedingly Familiar" with Conflict Management
How are mediators chosen (real and perceived) Q22, Q39

- The advisor’s method of choosing mediators (inner circle below) coincides almost exactly with the perceptions of other stakeholders’ (outer circle below) on how parties and their advisors choose mediation, i.e., by asking peers and relying on one’s own network (53%).
- Those who do go beyond their network ask local ADR institutions for advice (23%).
- Almost no one (1%) would leave such a task solely to the client to suggest, which infers a strong disconnect between the high level of knowledge users claim to have concerning mediation and the practical use of that knowledge when it comes to choosing a mediator.
- Search engines with objective third party feedback on mediator performance is also rarely used (4%).

How Advisors choose mediators

- Ask Peers: 53%
- Consult IMI Search Engine: 11%
- Ask local ADR institutions for advice: 23%
- Leave it to the client to suggest: 4%
- Other: 4%

“A happy client reinforces the relationship he has with his counsel. The client has a win, so [does] his initial opponent but also ultimately the counsel. Everyone wins.”

“The major problem is to convince my clients, etc., to rely on ADR (except possibly, commercial arbitration instead of courts of crown)”
In order to assess the potential breadth of use of mediation, respondents were asked in which areas conflicts could be facilitated by a competent professional:

**Users.** Generally Users were the most optimistic about using such professionals in the business to business context (87%), business to employee context (74%), and individual to individual context (78%). Individual to business disputes also scored relatively high as a possibility (67%).

**Other Stakeholders.** In all other areas, however, other stakeholders were more optimistic than users about the potential for using a competent professional, including disputes between businesses and communities (65%), between business and government (61%), between business and NGOs (59%), between individuals and business (69%), individuals to government (63%), as well as between governments (62%).
In describing practice experiences, 83% of respondents said their work involves some form of conflict management or dispute resolution either frequently or “all the time”.

Consequently, not surprisingly 70% of respondents said that they are “exceedingly familiar and use” the mainstream forms of conflict management and resolution.

- The highest levels of familiarity and use exists in North America (83%), Australia/New Zealand (79%), and Europe (68%).
- The “lowest” levels of “exceeding familiarity and use” arose in Asia (52%), the Middle East (61%), Latin America (56%) and Africa (62%), but these were still majorities.
- Only Africa (2%) and Asia (2%) had any respondents who were not at all familiar with the mainstream forms of conflict management and resolution.

The majority of respondents (76%) speak with either peers and/or industry about conflict management and resolution either “often” or “all the time”, with only (17%) finding such engagement to be nonessential.
Overview

The worldwide audience is interested in advocacy of mediation – of educating the Users on mediation and on developing uniform international standards. They are aware that education and qualifications for mediators are very important but found a gap in uniformity overall:

• Over 75% of stakeholders responded that User views on mediation are the most important factor as concerns their work in conflict management.

• Only 36% considered the time mediation takes to resolve a conflict as being extremely important (noteworthy against the importance placed on User views).

• Similarly, only 41% found the success rate of mediation as extremely important or the types of conflict mediation could be used for (39%).

• The importance of User views is only overshadowed slightly in certain regions by the importance of mediator qualifications and experience. Approximately 50% of respondents think it is extremely important to know what mediators think of the practice of mediation. Given that mediators are often unregulated and there is no current structured licensing or other regulatory requirement globally, and those that have become mediators have chosen to do so voluntarily to advance their careers or grow their business, this response makes sense. As compared to User views, this showcases perhaps the focus of the user-friendly and flexible process of mediation for the benefit of users.

Contrasted to the above set of questions, regions varied in their responses as to which areas were most beneficial for an organization to be shepherding at this time:

• **Africa and Latin America** represent two of the youngest pools aged 45 and under (40% and 38%, respectively). “Providing tools for Users” was the most important area IMI could provide a benefit according to both Africa (58%) and Latin America (64%).

• **Europe** comprises a slightly older population (32% aged 45 and under). “Setting high mediation standards that assure quality for users worldwide” was the most important area IMI could provide a benefit according to this region (49%).

• **Australia/New Zealand** has the most senior populations (7% aged 45 and under). “Influencing policy makers about promoting and using mediation and other forms of conflict management” was the most important area IMI could provide a benefit according to this region (52%).

• **North America** comprises the largest (35%) and also more senior (11% aged 45 and under) respondent pool. “Fostering measures that increase a common understanding of consensual dispute resolution processes in order to reduce the potential escalation of conflicts” was the most important area IMI could provide a benefit according to this region (30%).

• **Asia** comprises the third youngest population (35% aged 45 and under). “Setting high mediation standards that assure quality for users worldwide” was also the most important area IMI could provide a benefit according to this region (49%).

• Respondents from the **Middle East** represented too small of a base (13 respondents) to identify reliable trends. Its population was also quite senior (30% aged 45 and under). “Establishing a comprehensive code of professional conduct for certified mediators backed by a disciplinary process” was the most important area IMI could provide a benefit according to these respondents (50%).
How important are User views on conflict management to Stakeholders? Q11

**User views are extremely important.**
- The majority of all stakeholders (with the exception of Users themselves), find user views on conflict management to be extremely important – even more so than mediator views, mediation processes and statistical data on mediation.
- With slightly less intensity, 72% of all stakeholders find knowing how often users actually use mediation to be “important” (with only a majority (53%) of providers finding this information to be “extremely important”).
- A similar percentage of stakeholders (71%) find it “important” to know how often Users use other conflict resolution tools (though no majority of stakeholders found this data to be “extremely important”).

**Regionally, user views are the single most important factor in Africa (77%), Europe (69%), Australia/NZ (68%) and North America (67%).**
- Though also extremely important in Latin America (73%), the Middle East (69%), and Asia (57%), user views are not as important as mediator qualifications and experience in these jurisdictions.

- As representatives of users, advisors find it the least important to know how often users use mediation (28%) and only slightly more important than users as to how often users use other conflict resolution tools (30%).

2016 International Mediation & ADR Survey
How important are Mediator views to Stakeholders? Q11

**Mediator qualifications and experience most important to Users.**

- The single most important factor (75%) for Users to know concerning their work in conflict management is what qualifications and experience a mediator has (compare to 63% of advisors, 68% of providers, 66% of mediators and 38% of other stakeholders such as government/NGOs who feel the same level of importance).

- Knowing what disciplinary proceedings a mediator may be subject to is also of the highest importance to the user stakeholder group (44%), but it does not hold the majority level of importance for any stakeholder. Knowing what mediators think about their profession is of highest importance to providers (60%), educators (59%) and other stakeholders such as government/NGOs (55%).

- Regionally, Latin America (79%), the Middle East (76%), and Asia (58%) find mediator qualifications and experience to be the most important consideration in conflict management. A majority of other jurisdictions also find mediator qualifications to be extremely important (North America 65%, Europe 63%, Africa 61%, Australia/NZ 60%), but not as important as user views.

- Mediator views are extremely important in Latin America (73%), Africa (63%), Australia/NZ (55%), the Middle East (53%) and Asia (53%), but do not hold a majority level of importance in Europe (48%) or North America (43%).

- Disciplinary proceedings for mediators is starkly more important in Latin America (64%), Africa (63%), and the Middle East (53%), than it is in North America (38%), Europe (37%), Australia/NZ (36%) or Asia (31%).
How important are mediation processes to Stakeholders?

Mediation process itself less important than User views.
• A majority of all stakeholders except mediators (45%) and educators (45%) stated that the enforcement of mediation outcomes was extremely important.
• Mediation outcomes held the largest extreme importance for users (52%), providers (50%) and students (50%).
• Users also placed the largest importance (50%) of all stakeholders on when mediations are mandatory as opposed to voluntary.
• There otherwise appears to be a disconnect between the relatively low level of importance of knowing certain process aspects of mediation as opposed to the high level of importance in knowing user views about mediation overall.
• Advisors and mediators in particular placed relatively less importance on what the outcomes of mediation are (advisors 43%; mediators 37%); how long it takes to resolve a conflict through mediation (advisors 38%, mediators 31%), or the types of conflicts mediation can be used for (advisors 41%, mediators 34%) than other stakeholders.

Regionally, enforcement of mediations holds the least level of extreme importance in North America (36%) and Australia/NZ (26%), compared to majority views in other regions.
• Mediation outcomes were also less important in Australia/NZ (21%), Asia (28%), North America (40%) and Europe (40%), than in the other regions.
• Though slightly more important overall, a similar trend existed amongst the regions with respect to how long it takes to resolve a conflict through mediation.

“Extremely important”

- When mediation is mandatory as opposed to voluntary
- What the outcomes of mediation are
- How long it takes to resolve a conflict through mediation
- The types of conflicts mediation is used for
- How mediation can be enforced

25% 50% 100%
How important is statistical data on mediation to Stakeholders?

Mediation statistics are most important to governments/NGOs.

• Perhaps unsurprisingly, the greatest interest in knowing the number of mediations conducted in one’s jurisdiction/region are government stakeholders (52%), with the largest regional interests in the Middle East* (53%), Latin America (46%), Africa (37%), and Europe (33%).

• Amongst the stakeholders, advisors attribute the least level of importance amongst the stakeholders to regional mediation data (26%).

• Providers (39%) and users (37%) demonstrate the largest interest in knowing the number of mediations performed in their profession/industry, but no stakeholder exhibited a majority interest in this type of information.

• Regionally, the Middle East* (61%), Latin America (48%), Africa (36%) and Europe (33%) also exhibited the greatest interest in this category.

• Global mediation data has the greatest interest amongst government/NGO stakeholders (35%), students (24%), users (31%) and educators (31%), but has the least level of interest to advisors (20%).

• Regionally, the Middle East* (46%), Latin America (39%), and Europe (30%) exhibited the largest interest in this category.

*small base
In order to assess areas of importance in mediation, respondents were asked which areas they deemed most beneficial for IMI to be shepherding:

- Overall, respondents found all mentioned categories to be important to a certain extent.
- Areas which respondents found to be of the highest importance for IMI were: setting high mediation standards that assure quality for users worldwide (42%), influencing policy makers about promoting and using mediation and other forms of conflict management and resolution (41%), increasing access to justice through promoting dispute resolution choices that are appropriate for the circumstance (40%), fostering measures that increase a common understanding of consensual dispute resolution processes in order to reduce potential escalation of conflicts (38%), providing networking opportunities (37%), and establishing a comprehensive code of professional conduct for certified mediators backed by a disciplinary process (35%).
- Areas scoring the lowest in importance (i.e., “not important at all”) where enabling IMI to accomplish its Mission & Vision (19%), providing objective information to help choose advisors (19%), and establishing a code of conduct (14%).
- Regionally, the most important area for Africa (58%) and Latin America (64%) was providing tools for Users.
- The most important area for Asia (49%) and Europe (49%) was setting high mediation standards that assure quality for users worldwide.
- The most important area for Australia/ NZ (52%) was influencing policy makers.
- The most important area for North America (30%) and the Middle East (50%) was fostering measures that increase a common understanding of consensual dispute resolution processes in order to reduce the potential escalation of conflicts.
- In addition to the above, the other most important area for the Middle East (50%)* was establishing a comprehensive code of professional conduct for certified mediators backed by a disciplinary process.

*small base
The study results reflect the dependence on mediators for process decisions and the integrity of the sessions. Given that mediation is mostly unstructured and tailored to the individual needs of the mediating parties, the mediator is often instrumental in shaping the process, and potentially the outcome, of the mediation. For this reason, the survey endeavored to gain more insight into the professional backgrounds of mediators.

Overall, it appears that those involved in mediation do so alongside another profession, predominantly a legal one. The responses to Q25 might suggest that a reason for this is the typically low remuneration for mediation work. In relation to IMI, respondents suggested that they would like it to take a more active role in the promotion and support of mediation. Remuneration levels juxtaposed against interest in mediation suggest that engagement may in many cases be altruistic.
What proportion does mediation play as part of a mediator’s overall practice? (Q24)

“Respondents were asked whether mediation was their primary profession or whether they also performed other services”.

- Approximately 70% of the total respondents engaged in some other profession as well as mediation, with almost 50% of those respondents engaging in some other form of ADR.
- This trend was more pronounced for males, with females more likely to pursue careers outside of the ADR field.
- It is interesting to note that of those respondents who specified the “other service” they performed in addition to mediation, 35% said they practiced law; which was the most prevalent “other” service.
- This would suggest that it is not uncommon practice for mediators to use their mediation skills within the scope of their legal practice.
- Moreover, IMI certified mediators were much more likely to remain within the ADR field than any other demographic.
The responses to this question help to shed light on the trend noticed in the previous question.

When asked about how much income was earned solely from mediation…

• More than half the respondents answered that they earned less than $50,000 USD equivalent a year, and of those half earned less than $10,000 USD equivalent a year for their mediation services.

• By way of comparison, in 2014 the Organisation for Economic Cooperation and Development (OECD) found that the average yearly wage of member countries was $44,982 USD.

• This may explain why approximately 70% of the total respondents to the previous question stated that they engaged in some other profession, as it appears from the data that most mediators do not earn a sufficient income from their mediation work alone.

• It is worth highlighting also that approximately 10% of respondents undertook mediation on a purely voluntary basis.

• IMI Certified Mediators generally earn more than non-certified mediators

• Women more likely to seek work on volunteer basis
What form of professional license/certification does the mediator hold? Q26

“In order to understand the qualifications of the respondents they were asked about their professional certification and licensing.” There was a clear trend between certification in law and mediation (almost 86% of respondents answered that they were certified in both law and/or mediation), and this would seem to corroborate the previous data from Q24, with approximately two thirds of respondents having some form of professional license or certification in these fields.

Of those respondents who had some form of professional licensing or certification, the most prevalent were:
• Annual continuing professional education training (73%)
• Payment of annual dues/fees (70%)
• Adherence to a professional Code of Conduct (70%)

It is noteworthy that the next most prevalent response, proof of professional development activities, was a big decrease from these responses, being 34% of respondents.

Conditions for maintaining license/certification Q27

- Annual continuing professional education training: 73%
- Payment of annual dues/fees: 70%
- Periodic performance based assessments: 14%
- Adherence to Professional Code of Conduct: 70%
- Providing feedback from clients: 20%
- Proof of professional development activities: 34%
- Other: 7%
Reasons for seeking license/certification Q28

When responding to ‘why’ the respondents chose to acquire such professional license/certification:
• The most common response, of which 57% of respondents selected, was to demonstrate professionalism.
• The next most prevalent responses were to signify personal credibility (42%), and also credibility for mediation itself (39%).

These responses suggest that the primary concern of respondents who acquire professional licensing or certification is to establish a sense of confidence in both themselves, and mediation, amongst stakeholders.

For those who seek IMI certification in particular, even more emphasis is placed on demonstrating professionalism (96%), business development (72%), and to signify personal credibility (75%), with an additional emphasis on enhancing the reputation of mediation (63%) and supporting the IMI mission generally (72%). For this demographic, obtaining an international stature (48%) was also significantly more relevant than other demographics.
Questions were asked of mediators about the type of support they valued in their profession. Though asked in the context of IMI, the responses appear to reflect general areas of attention which mediators would value in promoting the continued growth of the profession overall:

• On the basis of the responses to this question it is apparent that a commonly held desire is to provide support to the mediation community, with over 50% of respondents calling for some sort of support service.
• Specifically, respondents thought this support could take the form of providing a professional support network and community of practice (approximately 25% of respondents), marketing support (approx. 18% of respondents), and the coordination of worldwide promotional activities (approx. 17% of respondents).
• Some less commonly provided responses included providing administrative support for referrals (10%), providing some form of tangible diploma or certification (8%) and becoming the initial mediation contact amongst stakeholders (8%).

On the basis of the responses it is clear that respondents would like an organization to adopt the role of an “umbrella organization” in coordinating international awareness for mediation, and also facilitating a network of mediation providers.
Analysis of survey results in this Chapter related to those in the Education, Government, and ADR Training Provider sectors. Those surveyed in the Education sector have a strong demand for more coursework relating to mediation. Conversely, those in the Government sector, especially those in the legislative and executive branches of government, while being vaguely familiar with mediation, don’t seem to put the same weight to the importance of mediation. Even the judicial branch is seen by the respondents to recommend mediation as a time and resource management tool. Are Judges themselves of the opinion that mediation should only be used to clear their docket? Or do they firmly and genuinely believe that mediation can help parties in a dispute save time, money and also obtain judicial economy for the court system?

Despite the strong predictable increase in mediation training in the next five years, respondents desire mediation training criteria and qualifications to become more standardized.

With respect to web-based tools, despite favorable responses to the idea of having such automated tools for mediation, respondents conveyed a sense of reluctance. Many commented on the importance of face-to-face and in-person communication, overcoming language and interpersonal communication barriers, and other characteristics so essential to mediation such as hand and facial gestures, communication tone, and body language.
Hesitation about automating mediation.

• 83% of respondents indicated that there would be at least some interest in web based/automated tools in the next five years. The greatest interest came from Asia (80%), Africa (62%), Europe (49%), Latin America (46%), and North America (36%). Yet comments were hesitant:

  • **Asia**: “In India, in general, face to face interactions are always much more preferred over online ones, hence, web-based mediation, at the moment, does not seem to have much significance.”

  • **Africa**: “Not yet popularised.”

  • **Europe**: “I’m not sure about automated tools even if some encouraging experience exists in Canada, but I’m convinced that we will see soon mediations through secured Conference calls.” “Web based mediation will become an important platform for consumer mediation.”

  • **Latin America**: “The problem is that they don’t speak other languages and that makes their spectre so short.”

  • **North America**: “Unfortunately, it appears this will be driven from the parties instead of the mediators themselves. But it will happen and ‘real soon now’”. “Power imbalance issues won’t be adequately addressed with automated tools. Their interest will be high, but it will only serve to allow them another opportunity to hide and avoid the issues of interpersonal communication and resolution.”

    “Interested... but feel an automated tool will not ever pick up on the nuances of tone of voice, and body language that assist a good mediator in being present with the parties in the dispute.”

  • **Australia/NZ**: “Blatantly discourage and reject... These seductive tools and emissions distort and disguise the authentic face to face, hand in hand social interactions that share a common time and place together...”
How familiar are legislators generally about mediation? Q31

The Government Sector were asked about their views as between various branches of government:

• **Legislators.** Overall, only 17% of respondents stated that legislators had any familiarity at all with mediation, with the greatest level of familiarity appearing to come from Asia (40%), Australia/NZ (20%), Africa (27%), Latin America (15%), and North America (13%).

• **Australia/NZ:** “Through the last decade in particular...legislators are muting mediation being discouraged as less lucrative or more profitable with civil litigation and established arbitration.”

• **Europe:** “Legislators are not paying any special attention to mediation from the fear that mediation cannot create sustainable income.”

• **Africa:** “Our legislators are completely ignorant of mediation.” “The Labour Relations Act is creating awareness”

• **Latin America:** “Congressmen are not really interested at all.”

• **North America:** “They have heard of it”

• **Executive branch.** Overall, only 18% of respondents stated that the Executive Branch has any familiarity at all with mediation. Australia/NZ (40%), Africa (36%), Asia (35%), North America (17%) and Latin America (15%) had the highest level of familiarity.

• **Latin America:** “Executive branch is interested but the problem is the bord try to copy other countries without taking their own culture.”

• **Africa:** “They don’t care, they need education.”

• **Australia/NZ:** “Executive department is largely composed of lawyers and communications backgrounds thus the term is familiar and often inconsequential.”

• **Europe:** “They are familiar, but not much on quality of the process more about results, number of mediated cases.” “Lack of knowledge and mediation/adr culture.”

• **North America:** “Used by agencies, provided as a tool for dispute resolution, train their lawyers and staff in either or both mediation and negotiation.”
Judicial branch most active.
- While only 8.7% of respondents stated that judges recommend mediation all of the time, 41% of respondents believe that judges recommend mediation most or some of the time.
- The highest proportion of judicial recommendations came from Asia (74%), Africa* (75%), Australia/NZ (60%), North America (46%), Latin America (45%), and Europe (41%).
- **Asia:** “A procedural step in court/other proceedings”
- **Australia/NZ:** “Judiciary departments might recommend frequently from position of overloaded schedules for family affairs or commercial relations. While others are more optimistic and experienced with small claims for same relationship purposes and cost issues.” “Unfortunately, many of my colleagues have not experienced mediation as a participant or mediator and are unfamiliar with its scope and benefits.”
- **North America:** “Time and resource management tool, directive to more appropriate process than litigation.” “Judges live in an adversarial environment and are comfortable with positional bargaining. Education is required for judges to appreciate other ways to manage disputes besides the litigation status quo.”
- **Europe:** “Due to lack of proper knowledge about mediation and due to its voluntary nature.”
- **Africa:** “Judges actually refer cases in their court to the LMDC for mediation although the referrals could be better in terms of numbers. Walk-in cases are presently more than court referred cases.” “[Mediation not] introduced enough. This is partially due to ignorance on the subject and disposition of leadership at the time.”

*small base
What is the level of interest in Student Bodies in mediation? Q31

Educators perceive large student interest in mediation.
• 53% of educators responding believe that their student bodies are either interested or exceedingly interested in mediation.
• Regionally, the largest level of interest is in Europe (40%), Africa (35%) and North America (32%).
• The least level of student interest is in the Middle East* (0), Australia/NZ (14%) and Asia (16%).

Fall of awareness creation is needed.”
• Europe: “Universities should be interested however it is mostly treated as a hobby of a specific person and once that person leaves... the topic is removed from the curriculum. All our efforts to start a master study...have failed so far.”

• North America: “Courses are full.” “Small group of law students intensely interested; others are ignorant until they practice; some intense interest among undergraduate and graduate students in other fields.”

• Asia: “Students’ interest in mediation seems to be increasing over the past few years.”

Course offerings are rare.
• Students (54%) generally show disappointment in the fact that course offerings are either rare or only offered as a secondary course related to the more primary course on arbitration.
• Regionally, while only a small percentage of students in Australia/NZ (33%), Latin America* (7%) and Europe (5%) stated that courses were exceedingly widespread, the majority state it is not widespread at all (Europe 56%; Asia 44%, Latin America 56%).

• Asia: “Mediation has gradually made inroads but its spread is restricted only to few law schools.”
• Africa: “Poorly run and usually on the back of arbitration. Theoretical.”
• Europe: “School programs should be revised at all educational levels.”
• North America: “Widespread isn’t the issue. Quality and focus are the challenges.”
• Australia/NZ: “Many institutes and programs adopt or disguise the skills and theories once boldly transparent within other programs like commercial relations or public administration.”

How widespread are courses in mediation? Q32

If you are an Educator, what is the level of interest in STUDENT BODIES generally about mediation?
Answered: 171  Skipped: 580

If you are a Student, how widespread are courses in mediation in learning institutions that you are familiar with?
Answered: 73  Skipped: 678

*small base
What is the prognosis on the level of interest in mediation training courses over the next 5 years? Q36

Interest in training courses set to increase.
- 63% of respondents believe that the level of interest in mediation training courses will increase over the next 5 years – 21% believe it will increase rapidly.
- Regionally, the quickest expected growth is in Africa (50%), Asia (38%), Latin America (31%), and the Middle East* (20%).
- Australia/NZ respondents felt that interest is set to plateau (40%).

Africa: “People are now about opportunities in building a career in mediation and the cost and time savings mediation provides.” “But not discerning as to quality of that training.”
Asia: “Many law and management students, lawyers, judges and other interested participants have all shown increasing interest in understanding theory and practice of mediation. Demand for mediation’s growth... is going to register a significant growth in India in coming years.”
North America: “Interest will increase – but in which form of mediation? Empowering individuals to resolve, or morphing into a diluted legal process?” “It will increase rapidly in some sectors, for example where changes in the justice system require systemic retooling, or where workplace legislation forces training.”
Europe: “Competition between training institutes is strong as hardly any criteria are set.” “Interest will inevitably decrease if no or few mediations are conducted. Unless there is legislative support, mediation will not be able to become publicly known.” “The interest should be focussed on quality and advanced education.”
Australia/NZ: “Considering demographic trends, transitions and intercultural difference, it is the solution.” “I think we have had our peak.” “Strong interest now... Won’t plateau for some time.”
Latin America: “I would love that the interest in training mediators increase more in business.”

*small base
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March 2016 - September 2017
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NB: Please note that all percentages expressed during the voting results are based on the number of points each option actually obtained, compared to the maximum number of points that option could have obtained (which is 3 x the no. of people who voted on that question). It is a popularity ranking rather than a percentage of the total number of points allocated. As a result, the percentages do not add up to 100% in each question.

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Data from the Devices: Location Settings (per city)

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5. France - 5.33%
6. Hong Kong - 4.79%
7. South Africa - 4.44%
8. Brazil - 4.43%
9. Spain - 4.26%
10. Australia - 3.47%
11. Germany - 3.33%
12. Switzerland - 3.26%
13. Italy - 3.16%
14. Poland - 2.65%
15. Mexico - 2.59%
16. Netherlands - 2.54%
17. Nigeria - 2.08%
18. Thailand - 1.91%
19. New Zealand - 1.85%
Q1. Delegate Information

Approximately how many times have you been involved in any dispute resolution proceedings (i.e., litigation, arbitration, conciliation and/or mediation)?

(2464 voters)

- 21% (> 501, 514 votes)
- 12% (201 - 500, 304 votes)
- 20% (51 - 200, 497 votes)
- 20% (11 - 50, 500 votes)
- 26% (0 - 10, 647 votes)
Q2. Delegate Information

In what kinds of dispute resolution processes have you most often been involved?

(2463 voters)

- Litigation: 25% (609)
- Arbitration: 12% (288)
- Conciliation: 3% (66)
- Mediation: 28% (695)
- Adjudicative processes: Litigation & Arbitration: 11% (276)
- Non-Adjudicative processes: Conciliation & Mediation: 6% (151)
- Approximately equal amounts of adjudicative and consensual processes: 7% (180)
- No typical process: 5% (120)
- Other: 3% (78)

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Q3. Delegate Information

Within which jurisdiction do you usually work? (If your work involves several of these jurisdictions, please select the one in which you are primarily involved, or select the one you wish your votes to be counted towards today).

(2452 voters)

- Domestic: Your country of residence (1794) - 73%
- Domestic: Another country (167) - 6%
- International (423) - 17%
- Other (68) - 3%
Q4. Delegate Information

How many people work in your organisation?

(2414 voters)

- > 10000 people: 7% (166)
- 5001 - 10000 people: 2% (58)
- 1001 - 5000 people: 9% (210)
- 501 - 1000 people: 6% (136)
- 151 - 500 people: 11% (263)
- 51 - 150 people: 9% (215)
- 11- 50 people: 17% (416)
- 1 - 10 people: 39% (950)
Q5. Delegate Information

Which is your gender?

(2439 voters)

- Male: 54% (1316)
- Female: 46% (1118)
- Other: 0.2% (5)

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Session 1 – Demographic Results

Which category of stakeholder will you vote as today? (If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(2878 voters)

- Party (user of dispute resolution services): A person or in-house counsel involved in commercial disputes: 15%
- Advisor: An external lawyer or consultant to a party: 26%
- Adjudicative Provider: A judge, arbitrator, or organisation providing their services: 14%
- Non-Adjudicative Provider: A conciliator, mediator or organisation providing such services: 30%
- Influencer: A researcher, educator, employee/representative of government, or any other person not in categories 1-4 above: 15%

All numbers have been rounded up to the closest integers.
### Session 1 Question 1: Global Results

What outcomes do parties most often want before starting a process in commercial civil dispute resolution? (Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point). 

(17219 points; 2874 voters; total possible points per answer = 3 x 2874 = 8622)

<table>
<thead>
<tr>
<th>Outcome Description</th>
<th>Points</th>
<th>Percentage</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Action-focused (e.g. prevent action or require an action from one of the parties)</td>
<td>5956</td>
<td>69%</td>
<td>60%</td>
</tr>
<tr>
<td>2. Financial (e.g. damages, compensation, etc.)</td>
<td>5156</td>
<td>60%</td>
<td>2874</td>
</tr>
<tr>
<td>3. Judicial (e.g. setting a legal precedent)</td>
<td>2411</td>
<td>30%</td>
<td>12%</td>
</tr>
<tr>
<td>4. Psychological (e.g., vindication, closure, being heard, procedural fairness)</td>
<td>2547</td>
<td>30%</td>
<td>1047</td>
</tr>
<tr>
<td>5. Relationship-focused (e.g. terminate or preserve a relationship)</td>
<td>107</td>
<td>28%</td>
<td>2411</td>
</tr>
<tr>
<td>Other</td>
<td>102</td>
<td>12%</td>
<td>1%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
### Session 1 Question 1: Cross-Sorted Results (2874 voters)

<table>
<thead>
<tr>
<th>Party (433)</th>
<th>Advisor (734)</th>
<th>Adjudicative Provider (403)</th>
<th>Non Adjudicative (873)</th>
<th>Influencer (431)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial</td>
<td>Financial</td>
<td>Financial</td>
<td>Financial</td>
<td>Financial</td>
</tr>
<tr>
<td>Action focused</td>
<td>Action focused</td>
<td>Action focused</td>
<td>Psychological</td>
<td>Action focused</td>
</tr>
<tr>
<td>Psychological</td>
<td>Psychological</td>
<td>Relationship</td>
<td>Psychological</td>
<td>Psychological</td>
</tr>
<tr>
<td>Judicial</td>
<td>Judicial</td>
<td>Judicial</td>
<td>Judicial</td>
<td>Judicial</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
<tr>
<td>65%</td>
<td>75%</td>
<td>73%</td>
<td>64%</td>
<td>65%</td>
</tr>
<tr>
<td>64%</td>
<td>61%</td>
<td>58%</td>
<td>57%</td>
<td>62%</td>
</tr>
<tr>
<td>33%</td>
<td>26%</td>
<td>26%</td>
<td>39%</td>
<td>34%</td>
</tr>
<tr>
<td>21%</td>
<td>23%</td>
<td>26%</td>
<td>30%</td>
<td>25%</td>
</tr>
<tr>
<td>14%</td>
<td>14%</td>
<td>17%</td>
<td>9%</td>
<td>13%</td>
</tr>
<tr>
<td>2%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*
Session 1 Question 2: Global Results

When parties involved in commercial disputes are choosing the type(s) of dispute resolution process(es) to use, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(16947 points; 2827 voters; total possible points per answer = 3 x 2827 = 8481)

1. Advice (e.g. from lawyer or other advisor) 58%
2. Confidentiality expectations 19%
3. Efficiency (e.g. time/cost to achieve outcome) 61%
4. Industry practices 14%
5. Predictability of outcome 28%
6. Relationships (e.g. preventing conflict escalation) 18%

Other 1%

All numbers have been rounded up to the closest integers.
### Session 1 Question 2: Cross-Sorted Results (2827 voters)

<table>
<thead>
<tr>
<th>Party (414)</th>
<th>Advisor (718)</th>
<th>Adjudicative Provider (407)</th>
<th>Non Adjudicative (867)</th>
<th>Influencer (421)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>Advice</td>
<td>Efficiency</td>
<td>Efficiency</td>
<td>Advice</td>
</tr>
<tr>
<td>65%</td>
<td>63%</td>
<td>61%</td>
<td>60%</td>
<td>61%</td>
</tr>
<tr>
<td>Advice</td>
<td>Efficiency</td>
<td>Predictability</td>
<td>Predictability</td>
<td>Confidentiality</td>
</tr>
<tr>
<td>46%</td>
<td>61%</td>
<td>30%</td>
<td>24%</td>
<td>19%</td>
</tr>
<tr>
<td>Predictability</td>
<td>Confidentiality</td>
<td>Industry Practices</td>
<td>Industry Practices</td>
<td>Relationship</td>
</tr>
<tr>
<td>32%</td>
<td>18%</td>
<td>13%</td>
<td>16%</td>
<td>21%</td>
</tr>
<tr>
<td>Relationship</td>
<td>Industry Practices</td>
<td>Relationship</td>
<td>Other</td>
<td>Relationship</td>
</tr>
<tr>
<td>24%</td>
<td>13%</td>
<td>2%</td>
<td>13%</td>
<td>18%</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Advice</td>
<td>Efficiency</td>
<td>Industry Practices</td>
<td>13%</td>
</tr>
<tr>
<td>19%</td>
<td>16%</td>
<td>16%</td>
<td>19%</td>
<td>Influence</td>
</tr>
<tr>
<td>Industry Practices</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
<tr>
<td>13%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
<tr>
<td>1%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*
Session 1 Question 3: Global Results

When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(16677 points; 2782 voters; total possible points per answer = 3 x 2782 = 8346)

1. Familiarity with a particular type of dispute resolution process (4950)  
   - 59%

2. Industry practices (1825)  
   - 22%

3. Impact on costs/fees the lawyer can charge (3324)  
   - 40%

4. The party's relationships with the other party(ies) or stakeholders (2123)  
   - 25%

5. The type of outcome requested by the party (e.g. money, an injunction, etc.) (4310)  
   - 52%

Other (145)  
- 2%

All numbers have been rounded up to the closest integers.
## Session 1 Question 3: Cross-Sorted Results

(2782 voters)

<table>
<thead>
<tr>
<th></th>
<th>Party (404)</th>
<th>Advisor (723)</th>
<th>Adjudicative Provider (403)</th>
<th>Non Adjudicative (837)</th>
<th>Influencer (415)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Familiarity</td>
<td>53%</td>
<td>57%</td>
<td>61%</td>
<td>63%</td>
<td>65%</td>
</tr>
<tr>
<td>Type of outcome</td>
<td>52%</td>
<td>55%</td>
<td>52%</td>
<td>49%</td>
<td>47%</td>
</tr>
<tr>
<td>Impact on Cost/fees</td>
<td>41%</td>
<td>35%</td>
<td>43%</td>
<td>41%</td>
<td></td>
</tr>
<tr>
<td>Party relationship</td>
<td>31%</td>
<td>27%</td>
<td>22%</td>
<td>26%</td>
<td></td>
</tr>
<tr>
<td>Industry Practices</td>
<td>21%</td>
<td>24%</td>
<td>21%</td>
<td>20%</td>
<td>21%</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>3%</td>
<td>1%</td>
<td>2%</td>
<td>0%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*
Session 1 Question 4: Global Results

What role do parties involved in commercial disputes want providers to take in the dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(16454 points; 2754 voters; total possible points per answer = 3 x 2754 = 8262)

5. The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute
   (5060)  
   61%

2. The providers decide on the process and the parties decide how the dispute is resolved
   (3406)  
   41%

1. The parties decide how the process is conducted and how the dispute is resolved (the providers just assist)
   (3207)  
   30%

3. The parties decide on the process and the providers decide how the dispute is resolved
   (2501)  
   26%

4. The providers decide on the process and how the dispute is resolved
   (2126)  

Other
   (154)  
   2%

All numbers have been rounded up to the closest integers.
## Session 1 Question 4: Cross-Sorted Results (2754 voters)

<table>
<thead>
<tr>
<th>Party (399)</th>
<th>Advisor (711)</th>
<th>Adjudicative Provider (400)</th>
<th>Non Adjudicative (835)</th>
<th>Influencer (409)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties initially do not have a preference</td>
<td>Parties initially do not have a preference</td>
<td>Parties initially do not have a preference</td>
<td>Parties initially do not have a preference</td>
<td>Parties initially do not have a preference</td>
</tr>
<tr>
<td>56%</td>
<td>58%</td>
<td>57%</td>
<td>68%</td>
<td>62%</td>
</tr>
<tr>
<td>Parties decide</td>
<td>Parties decide</td>
<td>Parties decide</td>
<td>Providers decide</td>
<td>Providers decide</td>
</tr>
<tr>
<td>46%</td>
<td>38%</td>
<td>39%</td>
<td>35%</td>
<td>41%</td>
</tr>
<tr>
<td>Parties decide process and Providers decide outcome</td>
<td>Parties decide process and Providers decide outcome</td>
<td>Parties decide process and Providers decide outcome</td>
<td>Provider decide</td>
<td>Provider decide</td>
</tr>
<tr>
<td>39%</td>
<td>36%</td>
<td>35%</td>
<td>27%</td>
<td>24%</td>
</tr>
<tr>
<td>Providers decide</td>
<td>Providers decide</td>
<td>Providers decide</td>
<td>Parties decide</td>
<td>Parties decide</td>
</tr>
<tr>
<td>38%</td>
<td>30%</td>
<td>57%</td>
<td>37%</td>
<td>20%</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
<td>Provider decide</td>
<td>Provider decide</td>
<td>Provider decide</td>
</tr>
<tr>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
### Session 1 Question 5: Global Results

What role do parties involved in commercial disputes typically want lawyers (i.e., in-house or external counsel) to take in the dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(16371 points; 2740 voters; total possible points per answer = 3 x 2740 = 8220)

<table>
<thead>
<tr>
<th>Role</th>
<th>Percentage</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Acting as coaches, providing advice but not attending</td>
<td>13%</td>
<td>(1071)</td>
</tr>
<tr>
<td>2. Acting as advisors and accompanying parties but not interacting with other parties or providers</td>
<td>29%</td>
<td>(2401)</td>
</tr>
<tr>
<td>3. Participating in the process by offering expert opinions, not acting on behalf of parties</td>
<td>32%</td>
<td>(2605)</td>
</tr>
<tr>
<td>4. Working collaboratively with the process. May request actions on behalf of a party</td>
<td>60%</td>
<td>(4930)</td>
</tr>
<tr>
<td>5. Speaking for parties and/or advocating on a party's behalf</td>
<td>58%</td>
<td>(4748)</td>
</tr>
<tr>
<td>6. Parties do not normally want lawyers to be involved</td>
<td>2%</td>
<td>(142)</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*
**Session 1 Question 5: Cross-Sorted Results** (2740 voters)

### Party (402)
- **Working collaboratively...** 61%
- **Speaking for parties** 48%
- **Participating in the process...** 36%
- **Acting as advisors and...** 30%
- **Acting as coaches, providing...** 16%
- **Parties do not normally...** 6%
- **Other** 1%

### Advisor (718)
- **Speaking for parties** 67%
- **Working collaboratively...** 61%
- **Acting as advisors and...** 28%
- **Participating in the process...** 28%
- **Parties do not normally...** 3%
- **Other** 1%

### Adjudicative Provider (391)
- **Speaking for parties** 65%
- **Working collaboratively...** 59%
- **Acting as advisors and...** 27%
- **Acting as coaches, providing...** 9%
- **Parties do not normally...** 7%
- **Other** 4%

### Non Adjudicative (828)
- **Speaking for parties** 54%
- **Working collaboratively...** 58%
- **Acting as advisors and...** 30%
- **Acting as coaches, providing...** 15%
- **Parties do not normally...** 7%
- **Other** 1%

### Influencer (401)
- **Working collaboratively...** 61%
- **Speaking for parties** 53%
- **Acting as advisors and...** 29%
- **Acting as coaches, providing...** 13%
- **Parties do not normally...** 6%
- **Other** 1%

*All numbers have been rounded up to the closest integers.*
### Session 2 – Demographic Results

Which category of stakeholder will you vote as today?
(If your regular practice involves several of these options, please select the one in which you have primarily been involved). (2474 voters)

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party (user of dispute resolution services): A person or in-house counsel involved in commercial disputes</td>
<td>14%</td>
<td>340</td>
</tr>
<tr>
<td>Advisor: An external lawyer or consultant to a party</td>
<td>26%</td>
<td>632</td>
</tr>
<tr>
<td>Adjudicative Provider: A judge, arbitrator, or organisation providing their services</td>
<td>15%</td>
<td>366</td>
</tr>
<tr>
<td>Non-Adjudicative Provider: A conciliator, mediator or organisation providing such services</td>
<td>31%</td>
<td>762</td>
</tr>
<tr>
<td>Influencer: A researcher, educator, employee/representative of government, or any other person not in categories 1-4 above</td>
<td>15%</td>
<td>374</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 2 Question 1: Global Results

What outcomes do providers tend to prioritise in commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(14636 points; 2446 voters; total possible points per answer = 3 x 2446 = 7338)

1. Action-focused (e.g. prevent action or require an action from one of the parties) 61%
   (4447)

2. Financial (e.g. damages, compensation, etc.) 60%
   (4390)

3. Judicial (e.g. setting a legal precedent) 18%
   (1311)

4. Psychological (e.g., vindication, closure, being heard, procedural fairness) 26%
   (1930)

5. Relationship-focused (e.g. terminate or preserve a relationship) 32%
   (2384)

Other 2%
(174)

All numbers have been rounded up to the closest integers.
### Session 2 Question 1: Cross-Sorted Results (2446 voters)

#### Party
- Financial: 64% Action-focused (322)
- Action-focused: 29% (20%)
- Judicial: 18% (21%)
- Psychological: 1% (2%)
- Other: 1% (2%)

#### Advisor
- Financial: 64% Action-focused (632)
- Action-focused: 28% (21%)
- Psychological: 20% (21%)
- Other: 2% (21%)

#### Adjudicative Provider
- Financial: 62% Action-focused (357)
- Action-focused: 25% (33%)
- Psychological: 20% (21%)
- Other: 3% (2%)

#### Non Adjudicative
- Financial: 55% Action-focused (761)
- Judicial: 33% (33%)
- Psychological: 20% (21%)
- Other: 3% (2%)

#### Influencer
- Financial: 64% Action-focused (374)
- Psychological: 29% (27%)
- Judicial: 20% (21%)
- Relationship-focused: 20% (21%)
- Other: 1% (2%)

All numbers have been rounded up to the closest integers.
Session 2 Question 2: Global Results

The outcome of a commercial dispute is determined primarily by which of the following?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(14659 points; 2448 voters; total possible points per answer = 3 x 2448 = 7344)

1. Consensus: the parties’ subjective interests (4632) - 63%
2. Culture: based cultural and/or religious norms (1057) - 14%
3. Equity: general principles of fairness (3572) - 49%
4. Rule of Law: findings of fact and law or other norms (4239) - 58%
5. Status: deferring to authority/hierarchies (980) - 13%

Other (179) - 2%

All numbers have been rounded up to the closest integers.
Session 2 Question 2: Cross-Sorted Results (2448 voters)

- **Party (332)**
  - Consensus: 66%
  - Rule of law: 59%
  - Equity: 48%
  - Status: 13%
  - Culture: 13%
  - Other: 1%

- **Advisor (625)**
  - Consensus: 55%
  - Rule of law: 67%
  - Equity: 49%
  - Status: 13%
  - Culture: 13%
  - Other: 2%

- **Adjudicative Provider (359)**
  - Consensus: 59%
  - Rule of law: 67%
  - Equity: 51%
  - Status: 8%
  - Culture: 12%
  - Other: 2%

- **Non Adjudicative (762)**
  - Consensus: 72%
  - Equity: 49%
  - Rule of law: 45%
  - Status: 14%
  - Culture: 16%
  - Other: 3%

- **Influencer (370)**
  - Consensus: 60%
  - Rule of law: 57%
  - Equity: 46%
  - Status: 17%
  - Culture: 15%
  - Other: 3%

*All numbers have been rounded up to the closest integers.*
Session 2 Question 3: Global Results

In commercial disputes, what is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(14832 points; 2452 voters; total possible points per answer = 3 x 2452 = 7356)

1. Better knowledge of the strengths/weaknesses of the case or likelihood of settlement (2871)
2. Compliance (e.g. avoiding cost sanctions, meeting contractual obligations) (1340)
3. Improving or restoring relationships (2883)
4. Reduced costs and expenses (3686)
5. Retaining control over the outcome (3369)
6. Tactical/strategic advantage (e.g. delay) (624)

Other (59)

All numbers have been rounded up to the closest integers.
Session 2 Question 3: Cross-Sorted Results (2452 voters)

<table>
<thead>
<tr>
<th>Party (329)</th>
<th>Advisor (626)</th>
<th>Adjudicative Provider (366)</th>
<th>Non Adjudicative (761)</th>
<th>Influencer (370)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced costs and expenses</td>
<td>Reduced costs and expenses</td>
<td>Reduced costs and expenses</td>
<td>Reduced costs and expenses</td>
<td>Reduced costs and expenses</td>
</tr>
<tr>
<td>49%</td>
<td>49%</td>
<td>50%</td>
<td>58%</td>
<td>52%</td>
</tr>
<tr>
<td>Better knowledge of the…</td>
<td>Better knowledge of the…</td>
<td>Better knowledge of the…</td>
<td>Retaining control over the…</td>
<td>Retaining control over the…</td>
</tr>
<tr>
<td>42%</td>
<td>46%</td>
<td>43%</td>
<td>51%</td>
<td>46%</td>
</tr>
<tr>
<td>Improving or restoring relationships</td>
<td>Improving or restoring relationships</td>
<td>Improving or restoring relationships</td>
<td>Improving or restoring relationships</td>
<td>Improving or restoring relationships</td>
</tr>
<tr>
<td>41%</td>
<td>38%</td>
<td>41%</td>
<td>38%</td>
<td>40%</td>
</tr>
<tr>
<td>Retaining control over the…</td>
<td>Retaining control over the…</td>
<td>Compliance</td>
<td>Compliance</td>
<td>Better knowledge of the…</td>
</tr>
<tr>
<td>38%</td>
<td>37%</td>
<td>18%</td>
<td>15%</td>
<td>33%</td>
</tr>
<tr>
<td>Compliance</td>
<td>Compliance</td>
<td>Compliance</td>
<td>Compliance</td>
<td>Compliance</td>
</tr>
<tr>
<td>20%</td>
<td>21%</td>
<td>18%</td>
<td>15%</td>
<td>21%</td>
</tr>
<tr>
<td>Tactical/strategic advantage</td>
<td>Tactical/strategic advantage</td>
<td>Tactical/strategic advantage</td>
<td>Tactical/strategic advantage</td>
<td>Tactical/strategic advantage</td>
</tr>
<tr>
<td>9%</td>
<td>8%</td>
<td>6%</td>
<td>4%</td>
<td>9%</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
<tr>
<td>0%</td>
<td>1%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 2 Question 4: Global Results

Who is primarily responsible for ensuring parties involved in commercial disputes understand their process options, and the possible consequences of each process before deciding which one to use?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point) 

(14478 points; 2428 voters; total possible points per answer = 3 x 2428 = 8262)

1. Adjudicative Providers: judges and arbitrators or their organisations (1970) - 59%
2. External lawyers (4332) - 55%
3. Governments/ministries of justice (785) - 27%
4. In-house lawyers (4039) - 29%
5. Non-Adjudicative Providers: mediators and conciliators or their organisations (2133) - 16%
6. Parties (non-legal personnel) (1163) - 11%

Other (56) - 1%

All numbers have been rounded up to the closest integers.
Session 2 Question 4: Cross-Sorted Results (2428 voters)

<table>
<thead>
<tr>
<th>Party (340)</th>
<th>Advisor (612)</th>
<th>Adjudicative Provider (362)</th>
<th>Non Adjudicative (751)</th>
<th>Influencer (363)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-house lawyers</td>
<td>65%</td>
<td>External lawyers</td>
<td>External lawyers</td>
<td>62%</td>
</tr>
<tr>
<td>External lawyers</td>
<td>55%</td>
<td>In-house lawyers</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Adjudicative Providers</td>
<td>26%</td>
<td>25%</td>
<td>Adjudicative Providers</td>
<td>37%</td>
</tr>
<tr>
<td>Non Adjudicative Providers</td>
<td>23%</td>
<td>20%</td>
<td>Non Adjudicative Providers</td>
<td>23%</td>
</tr>
<tr>
<td>Parties</td>
<td>20%</td>
<td>13%</td>
<td>Parties</td>
<td>13%</td>
</tr>
<tr>
<td>Governments/miinistries of justice</td>
<td>10%</td>
<td>8%</td>
<td>Governments/miinistries of justice</td>
<td>8%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>1%</td>
<td>Other</td>
<td>1%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 2 Question 5: Global Results

Currently, the most effective commercial dispute resolution processes usually involve which of the following?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(14002 points; 2401 voters; total possible points per answer = 3 x 2401 = 7203)

1. Adjudicative dispute resolution methods (litigation or arbitration)  (3630)
2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation)  (3139)
3. Encouragement by courts, tribunals or other providers to reduce time and/or costs  (1976)
4. Non-adjudicative dispute resolution methods (mediation or conciliation)  (2934)
5. Pre-dispute or pre-escalation processes to prevent disputes  (1973)
6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings)  (588)

Other (44)

All numbers have been rounded up to the closest integers.
**Session 2 Question 5: Cross-Sorted Results (2401 voters)**

<table>
<thead>
<tr>
<th>Party (321)</th>
<th>Advisor (609)</th>
<th>Adjudicative Provider (354)</th>
<th>Non Adjudicative (753)</th>
<th>Influencer (364)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-dispute or pre-escalation processes</td>
<td>50%</td>
<td>Combing adjudicative and non-adjudicative 55%</td>
<td>Combining adjudicative and non-adjudicative 58%</td>
<td>Combining adjudicative and non-adjudicative 59%</td>
</tr>
<tr>
<td>Non-adjudicative dispute resolution</td>
<td>41%</td>
<td>Pre-dispute or pre-escalation processes 39%</td>
<td>Non-adjudicative dispute resolution 38%</td>
<td>Pre-dispute or pre-escalation processes 48%</td>
</tr>
<tr>
<td>Adjudicative dispute resolution</td>
<td>28%</td>
<td>Adjudicative dispute resolution 37%</td>
<td>Adjudicative dispute resolution 36%</td>
<td>Encouragement by courts 27%</td>
</tr>
<tr>
<td>Encouragement by courts</td>
<td>23%</td>
<td>Encouragement by courts 28%</td>
<td>Pre-dispute or pre-escalation processes 33%</td>
<td>Adjudicative dispute resolution 17%</td>
</tr>
<tr>
<td>Technology to enable faster...</td>
<td>9%</td>
<td>Technology to enable faster... 7%</td>
<td>Technology to enable faster... 8%</td>
<td>Technology to enable faster... 7%</td>
</tr>
<tr>
<td>Other</td>
<td>0%</td>
<td>Other 1%</td>
<td>Other</td>
<td>Other 0%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*

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Session 3 – Demographic Results

Which category of stakeholder will you vote as today?
(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(2207 voters)

- Party (user of dispute resolution services): A person or in-house counsel involved in commercial disputes
  - 326 votes
  - 15%

- Advisor: An external lawyer or consultant to a party
  - 557 votes
  - 25%

- Adjudicative Provider: A judge, arbitrator, or organisation providing their services
  - 297 votes
  - 13%

- Non-Adjudicative Provider: A conciliator, mediator or organisation providing such services
  - 698 votes
  - 32%

- Influencer: A researcher, educator, employee/representative of government, or any other person not in categories 1-4 above
  - 329 votes
  - 15%

All numbers have been rounded up to the closest integers.
Session 3 Question 1: Global Results

What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(13166 points; 2198 voters; total possible points per answer = 3 x 2198 = 6594)

- 2. Financial or time constraints (3897) 59%
- 4. Insufficient knowledge of options available to resolve disputes (3440) 52%
- 5. Uncertainty (e.g. unpredictable behaviour or lack of confidence in providers) (2265) 34%
- 1. Emotional, social, or cultural constraints (2217) 34%
- 3. Inadequate range of options available to resolve disputes (1214) 18%
- Other (133) 2%

All numbers have been rounded up to the closest integers.
### Session 3 Question 1: Cross-Sorted Results (2198 voters)

<table>
<thead>
<tr>
<th></th>
<th>Party (326)</th>
<th>Advisor (549)</th>
<th>Adjudicative Provider (297)</th>
<th>Non Adjudicative (697)</th>
<th>Influencer (329)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial or time</td>
<td>60%</td>
<td>67%</td>
<td>62%</td>
<td>62%</td>
<td>59%</td>
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<tr>
<td>constraints</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insufficient</td>
<td>39%</td>
<td>43%</td>
<td>55%</td>
<td>51%</td>
<td>58%</td>
</tr>
<tr>
<td>knowledge of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>options</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncertainty</td>
<td>38%</td>
<td>36%</td>
<td>38%</td>
<td>35%</td>
<td>33%</td>
</tr>
<tr>
<td>Emotional, social,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>or cultural</td>
<td>38%</td>
<td>34%</td>
<td>26%</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>Inadequate range of</td>
<td>21%</td>
<td>17%</td>
<td>17%</td>
<td>20%</td>
<td>17%</td>
</tr>
<tr>
<td>options</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>3%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*

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Session 3 Question 2: Global Results

To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritised?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point) (13066 points; 2191 voters; total possible points per answer = 3 x 2191 = 6573)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Description</th>
<th>Votes</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Adjudicative dispute resolution methods (litigation or arbitration)</td>
<td>3363</td>
<td>51%</td>
</tr>
<tr>
<td>2</td>
<td>Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation)</td>
<td>2928</td>
<td>45%</td>
</tr>
<tr>
<td>3</td>
<td>Non-adjudicative dispute resolution methods (mediation or conciliation)</td>
<td>2806</td>
<td>43%</td>
</tr>
<tr>
<td>4</td>
<td>Encouragement by courts, tribunals or other providers to reduce time and/or costs</td>
<td>2098</td>
<td>32%</td>
</tr>
<tr>
<td>5</td>
<td>Pre-dispute or pre-escalation processes to prevent disputes</td>
<td>1216</td>
<td>18%</td>
</tr>
<tr>
<td>6</td>
<td>Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings)</td>
<td>655</td>
<td>10%</td>
</tr>
</tbody>
</table>

Other: 67 votes (1%)

All numbers have been rounded up to the closest integers.
Session 3 Question 2: Cross-Sorted Results (2191 voters)

<table>
<thead>
<tr>
<th>Party (318)</th>
<th>Advisor (557)</th>
<th>Adjudicative Provider (296)</th>
<th>Non Adjudicative (698)</th>
<th>Influencer (322)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-dispute or preescalation processes</td>
<td>Pre-dispute or preescalation processes</td>
<td>Combining adjudicative and non-adjudicative</td>
<td>Pre-dispute or preescalation processes</td>
<td>Pre-dispute or preescalation processes</td>
</tr>
<tr>
<td>55%</td>
<td>47%</td>
<td>54%</td>
<td>58%</td>
<td>53%</td>
</tr>
<tr>
<td>Combining adjudicative and non-adjudicative</td>
<td>Combining adjudicative and non-adjudicative</td>
<td>Non-adjudicative dispute resolution methods</td>
<td>Combining adjudicative and non-adjudicative</td>
<td>Combining adjudicative and non-adjudicative</td>
</tr>
<tr>
<td>46%</td>
<td>47%</td>
<td>34%</td>
<td>38%</td>
<td>44%</td>
</tr>
<tr>
<td>Non-adjudicative dispute resolution methods</td>
<td>Encouragement by courts</td>
<td>Encouragement by courts</td>
<td>Encouragement by courts</td>
<td>Encouragement by courts</td>
</tr>
<tr>
<td>39%</td>
<td>36%</td>
<td>33%</td>
<td>30%</td>
<td>38%</td>
</tr>
<tr>
<td>Encouragement by courts</td>
<td>Non-adjudicative dispute resolution methods</td>
<td>Technology to enable faster...</td>
<td>Technology to enable faster...</td>
<td>Technology to enable faster...</td>
</tr>
<tr>
<td>30%</td>
<td>20%</td>
<td>15%</td>
<td>16%</td>
<td>22%</td>
</tr>
<tr>
<td>Technology to enable faster...</td>
<td>Adjudicative dispute resolution methods</td>
<td>Adjudicative dispute resolution methods</td>
<td>Adjudicative dispute resolution methods</td>
<td>Adjudicative dispute resolution methods</td>
</tr>
<tr>
<td>10%</td>
<td>16%</td>
<td>14%</td>
<td>3%</td>
<td>11%</td>
</tr>
<tr>
<td>Adjudicative dispute resolution methods</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
<tr>
<td>0%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.

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Session 3 Question 3: Global Results

Which of the following areas would most improve commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(12710 points; 2159 voters; total possible points per answer = 3 x 2159 = 6477)

1. Accreditation or certification systems for dispute resolution providers (1831)
2. Cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration. (2354)
3. Legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation (3322)
4. Quality control and complaint mechanisms applicable to dispute resolution providers (1849)
5. Use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out) (3033)
6. Rules governing third party funding (321)

Other (208)

51%
47%
29%
28%
5%
3%

All numbers have been rounded up to the closest integers.
### Session 3 Question 3: Cross-Sorted Results (2159 voters)

<table>
<thead>
<tr>
<th>Party (316)</th>
<th>Advisor (549)</th>
<th>Adjudicative Provider (294)</th>
<th>Non Adjudicative (685)</th>
<th>Influencer (315)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation or conventions</td>
<td>Legislation or conventions</td>
<td>Legislation or conventions</td>
<td>Use of protocols</td>
<td>Legislation or conventions</td>
</tr>
<tr>
<td>Use of protocols</td>
<td>Use of protocols</td>
<td>Use of protocols</td>
<td>Cost sanctions against parties</td>
<td>Use of protocols</td>
</tr>
<tr>
<td>Cost sanctions against parties</td>
<td>Cost sanctions against parties</td>
<td>Cost sanctions against parties</td>
<td>Accreditation or certification systems</td>
<td>Cost sanctions against parties</td>
</tr>
<tr>
<td>Accreditation or certification systems</td>
<td>Quality control</td>
<td>Quality control</td>
<td>Quality control</td>
<td>Accreditation or certification systems</td>
</tr>
<tr>
<td>Rules governing third...</td>
<td>Rules governing third...</td>
<td>Rules governing third...</td>
<td>Rules governing third...</td>
<td>Rules governing third...</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
</tbody>
</table>

- **All numbers have been rounded up to the closest integers.**
Session 3 Question 4: Global Results

Which stakeholders are likely to be most resistant to change in commercial dispute resolution practice?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(12078 points; 2151 voters; total possible points per answer = 3 x 2151 = 6453)

1. Adjudicative Providers: judges and arbitrators or their organisations (4323) - 67%
2. External lawyers (2485) - 39%
3. Governments/ministries of justice (1519) - 26%
4. In-house lawyers (1666) - 25%
5. Non-Adjudicative Providers: mediators and conciliators or their organisations (459) - 7%
6. Parties (non-legal personnel) (1626) - 24%

Other (84) - 1%

All numbers have been rounded up to the closest integers.
Session 3 Question 4: Cross-Sorted Results (2151 voters)

<table>
<thead>
<tr>
<th>Party</th>
<th>Advisor</th>
<th>Adjudicative Provider</th>
<th>Non Adjudicative</th>
<th>Influencer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(546)</td>
<td>(288)</td>
<td>(689)</td>
</tr>
<tr>
<td>External lawyers</td>
<td>External lawyers</td>
<td>External lawyers</td>
<td>External lawyers</td>
<td>External lawyers</td>
</tr>
<tr>
<td>68%</td>
<td>62%</td>
<td>71%</td>
<td>75%</td>
<td>72%</td>
</tr>
<tr>
<td>Governments/ministries of justice</td>
<td>Governments/ministries of justice</td>
<td>Adjudicative Providers</td>
<td>Governments/ministries of justice</td>
<td>Adjudicative Providers</td>
</tr>
<tr>
<td>42%</td>
<td>31%</td>
<td>30%</td>
<td>43%</td>
<td>40%</td>
</tr>
<tr>
<td>Parties</td>
<td>Parties</td>
<td>In-house lawyers</td>
<td>Parties</td>
<td>In-house lawyers</td>
</tr>
<tr>
<td>25%</td>
<td>29%</td>
<td>28%</td>
<td>19%</td>
<td>23%</td>
</tr>
<tr>
<td>In-house lawyers</td>
<td>In-house lawyers</td>
<td>Non Adjudicative Providers</td>
<td>Non Adjudicative Providers</td>
<td>Non Adjudicative Providers</td>
</tr>
<tr>
<td>21%</td>
<td>8%</td>
<td>9%</td>
<td>5%</td>
<td>9%</td>
</tr>
<tr>
<td>Non Adjudicative Providers</td>
<td>Non Adjudicative Providers</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
<tr>
<td>11%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>2%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 3 Question 5: Global Results

Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution practice?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(12356 points; 2157 voters; total possible points per answer = 3 x 2157 = 6471)

1. Adjudicative Providers: judges and arbitrators or their organisations
   - Governments/ministries of justice
     (2663) 41%
   - 2606
   - 2. External lawyers
     (2346) 36%
   - 2. In-house lawyers
     (2551) 32%
   - 6. Parties (non-legal personnel)
     (1393) 22%
   - (1297) 20%
   - Other
     (68) 1%

All numbers have been rounded up to the closest integers.
Session 3 Question 5: Cross-Sorted Results (2157 voters)

**Party** (314)
- In-house lawyers: 42%
- Governments/ministry of justice: 40%
- Adjudicative Providers: 36%
- External lawyers: 34%
- Parties: 27%
- Other: 0%

**Advisor** (546)
- In-house lawyers: 50%
- Governments/ministry of justice: 41%
- Adjudicative Providers: 39%
- External lawyers: 32%
- Parties: 21%
- Other: 1%

**Adjudicative Provider** (294)
- Governments/ministry of justice: 45%
- External lawyers: 37%
- In-house lawyers: 34%
- Parties: 19%
- Other: 1%

**Non Adjudicative Provider** (689)
- Governments/ministry of justice: 43%
- External lawyers: 37%
- In-house lawyers: 31%
- Parties: 25%
- Other: 1%

**Influencer** (314)
- Governments/ministry of justice: 44%
- External lawyers: 35%
- In-house lawyers: 29%
- Parties: 26%
- Other: 1%

*All numbers have been rounded up to the closest integers.*

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Session 4
### Session 4 – Demographic Results

Which category of stakeholder will you vote as today?

(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(2004 voters)

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party (user of dispute resolution services): A person or in-house counsel involved in commercial disputes</td>
<td>288</td>
<td>14%</td>
</tr>
<tr>
<td>Advisor: An external lawyer or consultant to a party</td>
<td>497</td>
<td>25%</td>
</tr>
<tr>
<td>Adjudicative Provider: A judge, arbitrator, or organisation providing their services</td>
<td>637</td>
<td>13%</td>
</tr>
<tr>
<td>Non-Adjudicative Provider: A conciliator, mediator or organisation providing such services</td>
<td>313</td>
<td>16%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*
Session 4 Question 1: Global Results

Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point).

(11832 points; 1990 voters; total possible points per answer = 3 x 1990 = 5970)

1. Adjudicative Providers: judges and arbitrators or their organisations
   - 49% (3931 points)

2. External lawyers
   - 34% (2899 points)

3. Governments/ministries of justice
   - 66% (3931 points)

4. In-house lawyers
   - 19% (1135 points)

5. Non-Adjudicative Providers: mediators and conciliators or their organisations
   - 18% (1103 points)

6. Parties (non-legal personnel)
   - 12% (729 points)

Other
- 1% (71 points)

All numbers have been rounded up to the closest integers.
<table>
<thead>
<tr>
<th>Party</th>
<th>Advisor (497)</th>
<th>Adjudicative Provider (258)</th>
<th>Non Adjudicative (634)</th>
<th>Influencer (313)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governments/minis tries of justice</td>
<td>62%</td>
<td>67%</td>
<td>63%</td>
<td>67%</td>
</tr>
<tr>
<td>Adjudicative Providers</td>
<td>46%</td>
<td>49%</td>
<td>49%</td>
<td>47%</td>
</tr>
<tr>
<td>External lawyers</td>
<td>32%</td>
<td>42%</td>
<td>35%</td>
<td>29%</td>
</tr>
<tr>
<td>In-house lawyers</td>
<td>24%</td>
<td>17%</td>
<td>21%</td>
<td>22%</td>
</tr>
<tr>
<td>Non Adjudicative Providers</td>
<td>16%</td>
<td>15%</td>
<td>15%</td>
<td>18%</td>
</tr>
<tr>
<td>Parties</td>
<td>17%</td>
<td>9%</td>
<td>13%</td>
<td>13%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 4 Question 2: Global Results

What is the most effective way to improve parties' understanding of their options resolving commercial disputes?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(11969 points; 2002 voters; total possible points per answer = 3 x 2002 = 6006)

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options</td>
<td>64%</td>
<td>3869</td>
</tr>
<tr>
<td>3. Procedural requirements for all legal personnel and parties to declare they have considered non-adjudicative dispute resolution options before initiating arbitration or litigation</td>
<td>37%</td>
<td>2210</td>
</tr>
<tr>
<td>5. Requiring parties to attempt non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration</td>
<td>34%</td>
<td>2065</td>
</tr>
<tr>
<td>1. Creating collaborative dispute resolution centres or hubs to promote awareness</td>
<td>34%</td>
<td>2050</td>
</tr>
<tr>
<td>4. Providing access to experts to guide parties in selecting the most appropriate dispute resolution process(es)</td>
<td>28%</td>
<td>1659</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>116</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 4 Question 2: Cross-Sorted Results (2002 voters)

### Party (288)
- **Education in business**: 65%
- **Creating collaborative dispute resolution**: 37%
- **Procedural requirements**: 33%
- **Requiring parties to attempt...** 30%
- **Providing access to experts**: 2%

### Advisor (496)
- **Education in business**: 67%
- **Procedural requirements**: 39%
- **Requiring parties to attempt...** 34%
- **Creating collaborative dispute resolution**: 32%
- **Providing access to experts**: 25%
- **Other**: 2%

### Adjudicative Provider (269)
- **Education in business**: 66%
- **Procedural requirements**: 39%
- **Requiring parties to attempt...** 33%
- **Creating collaborative dispute resolution**: 33%
- **Providing access to experts**: 25%
- **Other**: 2%

### Non Adjudicative (637)
- **Education in business**: 62%
- **Procedural requirements**: 38%
- **Requiring parties to attempt...** 38%
- **Creating collaborative dispute resolution**: 33%
- **Providing access to experts**: 27%
- **Other**: 2%

### Influencer (312)
- **Education in business**: 63%
- **Creating collaborative dispute resolution**: 38%
- **Providing access to experts**: 33%
- **Procedural requirements**: 33%
- **Requiring parties to attempt...** 29%
- **Other**: 3%

*All numbers have been rounded up to the closest integers.*

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Session 4 Question 3: Global Results

To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(11795 points; 1972 voters; total possible points per answer = 3 x 1972 = 5916)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Proposal</th>
<th>Votes</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation</td>
<td>2552</td>
<td>43%</td>
</tr>
<tr>
<td>2</td>
<td>Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes can be initiated</td>
<td>2734</td>
<td>46%</td>
</tr>
<tr>
<td>3</td>
<td>Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings</td>
<td>2798</td>
<td>47%</td>
</tr>
<tr>
<td>4</td>
<td>Reducing pressures on the courts to make them more efficient and accessible</td>
<td>1031</td>
<td>17%</td>
</tr>
<tr>
<td>5</td>
<td>Other</td>
<td>166</td>
<td>3%</td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 4 Question 3: Cross-Sorted Results (1972 voters)

All numbers have been rounded up to the closest integers.
Which of the following will have the most significant impact on future policy-making in commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

(11576 points; 1956 voters; total possible points per answer = 3 x 1956 = 5868)

1. Demand for certainty and enforceability of outcomes (3074)
   - 52%

2. Demand for increased efficiency of dispute resolution processes, including through technology (3760)
   - 64%

3. Demand for increased rights of appeal/oversight of adjudicative providers (694)
   - 12%

4. Demand for increased transparency (1591)
   - 27%

5. Demand for increased uniformity and standardisation (1327)
   - 23%

6. Demand for processes that allow parties to represent themselves, without lawyers (1130)
   - 19%

Other (108)
   - 2%

All numbers have been rounded up to the closest integers.
### Session 4 Question 4: Cross-Sorted Results (1956 voters)

<table>
<thead>
<tr>
<th>Party (284)</th>
<th>Advisor (486)</th>
<th>Adjudicative Provider (257)</th>
<th>Non Adjudicative (620)</th>
<th>Influencer (309)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand for efficiency</td>
<td>65%</td>
<td>Demand for efficiency</td>
<td>65%</td>
<td>Demand for efficiency</td>
</tr>
<tr>
<td>Demand for certainty</td>
<td>52%</td>
<td>Demand for certainty</td>
<td>56%</td>
<td>Demand for certainty</td>
</tr>
<tr>
<td>Demand for transparency</td>
<td>30%</td>
<td>Demand for transparency</td>
<td>28%</td>
<td>Demand for transparency</td>
</tr>
<tr>
<td>Demand for uniformity</td>
<td>22%</td>
<td>Demand for uniformity</td>
<td>22%</td>
<td>Demand for uniformity</td>
</tr>
<tr>
<td>Demand for processes that...</td>
<td>17%</td>
<td>Demand for processes that...</td>
<td>14%</td>
<td>Demand for processes that...</td>
</tr>
<tr>
<td>Demand for rights</td>
<td>13%</td>
<td>Demand for rights</td>
<td>14%</td>
<td>Demand for rights</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>Other</td>
<td>2%</td>
<td>Other</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

All numbers have been rounded up to the closest integers.
Session 4 Question 5: Global Results

What innovations/trends are going to have the most significant influence on the future of commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point)

(11819 points; 1952 voters; total possible points per answer = 3 x 1952 = 5856)

1. Changes in corporate attitudes to conflict prevention (e.g. from brain and social sciences) (2959) 51%
2. Enhanced understanding regarding how people behave and resolve conflict (e.g. from brain and social sciences) (1751) 30%
3. Greater emphasis on collaborative instead of adversarial processes for resolving disputes (3361) 57%
4. Greater emphasis on personal wellbeing and stress reduction of parties (806) 14%
5. Harmonisation of international laws and standards for dispute resolution systems (1418) 24%
6. Technological innovation (e.g. on-line dispute resolution) (1524) 26%

Other (60) 1%

All numbers have been rounded up to the closest integers.

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### Session 4 Question 5: Cross-Sorted Results (1952 voters)

<table>
<thead>
<tr>
<th>Party</th>
<th>Advisor (483)</th>
<th>Adjudicative Provider (260)</th>
<th>Non Adjudicative (616)</th>
<th>Influencer (309)</th>
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<tr>
<td></td>
<td>59%</td>
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<td>57%</td>
<td>62%</td>
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<tr>
<td>Greater emphasis on collaborative attitudes</td>
<td>Changes in corporate attitudes</td>
<td>Greater emphasis on collaborative attitudes</td>
<td>Greater emphasis on collaborative attitudes</td>
<td>Changes in corporate attitudes</td>
</tr>
<tr>
<td></td>
<td>53%</td>
<td>Changes in corporate attitudes</td>
<td>50%</td>
<td>52%</td>
</tr>
<tr>
<td>Changes in corporate attitudes</td>
<td>Enhanced understanding</td>
<td>Changes in corporate attitudes</td>
<td>Harmonisation of international laws...</td>
<td>Enhanced understanding</td>
</tr>
<tr>
<td></td>
<td>25%</td>
<td>Enhanced understanding</td>
<td>29%</td>
<td>32%</td>
</tr>
<tr>
<td>Harmonisation of international laws...</td>
<td>Technological innovation</td>
<td>Enhanced understanding</td>
<td>Harmonisation of international laws...</td>
<td>Harmonisation of international laws...</td>
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<tr>
<td></td>
<td>24%</td>
<td>Technological innovation</td>
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<td>27%</td>
</tr>
<tr>
<td>Enhanced understanding</td>
<td>Grater emphasis on personal...</td>
<td>Technological innovation</td>
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</tr>
<tr>
<td></td>
<td>13%</td>
<td>Grater emphasis on personal...</td>
<td>11%</td>
<td>20%</td>
</tr>
<tr>
<td>Technological innovation</td>
<td>Other</td>
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<td>7%</td>
<td>Grater emphasis on personal...</td>
</tr>
<tr>
<td></td>
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<td>Other</td>
<td>2%</td>
<td>Other</td>
</tr>
<tr>
<td>Grater emphasis on personal...</td>
<td>Other</td>
<td>Other</td>
<td>1%</td>
<td>Other</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>Other</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

*All numbers have been rounded up to the closest integers.*
ONLINE VOTES
(July 2017-August 2017)
Delegate Information – Online Voting

In what country are you based? (680/732 voters)

<table>
<thead>
<tr>
<th>Country</th>
<th>% of Respondents</th>
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<tbody>
<tr>
<td>Albania</td>
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<td>Algeria</td>
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<tr>
<td>Australia</td>
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</tr>
<tr>
<td>Bahrain/UK/Saudi Arabia</td>
<td>0.45%</td>
</tr>
<tr>
<td>Bangladesh, India</td>
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<td>Belgium</td>
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<td>Belize</td>
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<tr>
<td>Cambodia</td>
<td>1.49%</td>
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<tr>
<td>Canada</td>
<td>0.15%</td>
</tr>
<tr>
<td>Catalonia</td>
<td>0.45%</td>
</tr>
<tr>
<td>China, Hong Kong</td>
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</tr>
<tr>
<td>Colombia</td>
<td>0.30%</td>
</tr>
<tr>
<td>Costa Rica</td>
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</tr>
<tr>
<td>Croatia</td>
<td>2.39%</td>
</tr>
<tr>
<td>Cyprus</td>
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<tr>
<td>Cyprus</td>
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<tr>
<td>Denmark</td>
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<td>Ecuador</td>
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<tr>
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<td>ETHIOPIA</td>
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<tr>
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<td>Germany</td>
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<td>Ghana</td>
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<td>Greece</td>
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<tr>
<td>Guatemala</td>
<td>0.60%</td>
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<tr>
<td>India</td>
<td>0.15%</td>
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<tr>
<td>Indonesia</td>
<td>0.90%</td>
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<tr>
<td>Iran</td>
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<td>Ireland</td>
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<tr>
<td>Israel</td>
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<td>Italy</td>
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<td>Kenya</td>
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<td>Netherlands</td>
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<td>Nigeria</td>
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<tr>
<td>Northern Ireland</td>
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</tr>
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<td>Pakistan</td>
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</tr>
<tr>
<td>Poland</td>
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</tr>
<tr>
<td>Qatar</td>
<td>0.15%</td>
</tr>
<tr>
<td>Romania</td>
<td>0.90%</td>
</tr>
<tr>
<td>Saint Lucia, West Indies</td>
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</tr>
<tr>
<td>Sao Tome &amp; Principe</td>
<td>0.15%</td>
</tr>
<tr>
<td>Singapore</td>
<td>2.24%</td>
</tr>
<tr>
<td>South Africa</td>
<td>0.60%</td>
</tr>
<tr>
<td>Spain</td>
<td>1.35%</td>
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<tr>
<td>Sweden</td>
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<td>Switzerland</td>
<td>2.84%</td>
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</tr>
<tr>
<td>The Bahamas</td>
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</tr>
<tr>
<td>Turkey</td>
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</tr>
<tr>
<td>UAE</td>
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<tr>
<td>United Arab Emirates</td>
<td>6.13%</td>
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<td>United States</td>
<td>2.24%</td>
</tr>
<tr>
<td>United States</td>
<td>0.30%</td>
</tr>
<tr>
<td>USA</td>
<td>13.15%</td>
</tr>
<tr>
<td>Venezuela</td>
<td>0.15%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0.15%</td>
</tr>
<tr>
<td>Wales, UK</td>
<td>0.30%</td>
</tr>
<tr>
<td>West Bengal</td>
<td>0.15%</td>
</tr>
<tr>
<td>ZAMBIA</td>
<td>0.15%</td>
</tr>
</tbody>
</table>

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Demographic Results - Which is your category of stakeholder?

(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(732 voters)

Party (user of dispute resolution services): A business person or in-house counsel involved in commercial disputes (122) 16.67%

Advisor: An external lawyer or consultant to a party (195) 26.64%

Adjudicative Provider: A judge, arbitrator, or organisation providing their services (84) 11.48%

Non-Adjudicative Provider: A conciliator, mediator or organisation providing such services (219) 29.92%

Influencer: A researcher, educator, employee/representative of government, or any other person not in categories 1-4 above (112) 15.30%
**Session 1 Question 1 - Group Results**

What outcomes do parties most often want before starting a process in commercial and/or civil dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(3480 points: maximum no. of possible points per answer = 1740 points)

1. Action-focused (e.g. prevent action or require an action from one of the parties) **(987) 55.00%**

2. Financial (e.g. damages, compensation, etc.) **(1089) 61.00%**

3. Judicial (e.g. setting a legal precedent) **(316) 18.00%**

4. Psychological (e.g., vindication, closure, being heard, procedural fairness) **(564) 32.00%**

5. Relationship-focused (e.g. terminate or preserve a relationship) **(503) 28.00%**

Other **(21) 1.00%**
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2. Financial (e.g. damages, compensation,... 62%</td>
<td>2. Financial (e.g. damages, compensation,... 64%</td>
<td>2. Financial (e.g. damages, compensation,... 67%</td>
<td>2. Financial (e.g. damages, compensation,... 61%</td>
<td>2. Financial (e.g. damages, compensation,... 62%</td>
</tr>
<tr>
<td>2</td>
<td>1. Action-focused (e.g. prevent action... 61%</td>
<td>1. Action-focused (e.g. prevent action... 60%</td>
<td>1. Action-focused (e.g. prevent action... 54%</td>
<td>1. Action-focused (e.g. prevent action... 54%</td>
<td>1. Action-focused (e.g. prevent action... 55%</td>
</tr>
<tr>
<td>3</td>
<td>5. Relationship-focused (e.g. terminate or... 33%</td>
<td>3. Judicial (e.g. setting a... 26%</td>
<td>4. Psychological (e.g., vindication, closure,... 28%</td>
<td>4. Psychological (e.g., vindication, closure,... 45%</td>
<td>4. Psychological (e.g., vindication, closure,... 40%</td>
</tr>
<tr>
<td>4</td>
<td>3. Judicial (e.g. setting a... 24%</td>
<td>5. Relationship-focused (e.g. terminate or... 25%</td>
<td>3. Judicial (e.g. setting a... 22%</td>
<td>5. Relationship-focused (e.g. terminate or... 31%</td>
<td>5. Relationship-focused (e.g. terminate or... 26%</td>
</tr>
<tr>
<td>5</td>
<td>4. Psychological (e.g., vindication, closure,... 19%</td>
<td>4. Psychological (e.g., vindication, closure,... 24%</td>
<td>Other 1%</td>
<td>3. Judicial (e.g. setting a... 8%</td>
<td>Other 1%</td>
</tr>
<tr>
<td>6</td>
<td>Other 2%</td>
<td>Other 1%</td>
<td>Other 1%</td>
<td>Other 1%</td>
<td>Other 1%</td>
</tr>
</tbody>
</table>
Session 1 Question 2 - Group Results
When parties are choosing which type(s) of dispute resolution process(es) to use, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(3372 points: maximum no. of possible points per answer = 1686 points)

1. Advice (e.g. from lawyer or other advisor) (961) 55.00%
2. Confidentiality expectations (475) 27.00%
3. Efficiency (e.g. time/cost to achieve outcome) (902) 52.00%
4. Industry practices (219) 13.00%
5. Predictability of outcome (406) 23.00%
6. Relationships (e.g. preventing conflict escalation) (396) 23.00%
Other (13) 1.00%
<table>
<thead>
<tr>
<th>Session 1 Question 2 - Cross sorted Results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AVG Rank</strong></td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
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<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>7</td>
</tr>
</tbody>
</table>
Session 1 Question 3 - Group Results

When lawyers (whether in-house or external) make recommendations to parties about procedural options for dispute resolution, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(3306 points: maximum no. of possible points per answer = 1653 points)

1. Familiarity with a particular type of dispute resolution process (1003) 59.00%

2. Industry practices (357) 21.00%

3. Impact on costs/fees the lawyer can charge (682) 40.00%

4. The party's relationships with the other party(ies) or stakeholders (502) 30.00%

5. The type of outcome requested by the party (e.g. money, an injunction, etc.) (729) 43.00%

Other (33) 2.00%
### Session 1 Question 3 - Cross sorted Results

<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge...</th>
<th>Non-Adjudicative Provider: A conciliator,...</th>
<th>Influencer: A researcher, educator,...</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1. Familiarity with a particular... 59%</td>
<td>1. Familiarity with a particular... 57%</td>
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<td>1. Familiarity with a particular... 65%</td>
</tr>
<tr>
<td>2</td>
<td>3. Impact on costs/fees with... 44%</td>
<td>5. The type of outcome... 48%</td>
<td>3. Impact on costs/fees the... 38%</td>
<td>3. Impact on costs/fees the... 42%</td>
<td>3. Impact on costs/fees... 46%</td>
</tr>
<tr>
<td>3</td>
<td>4. The party’s relationships... 39%</td>
<td>3. Impact on costs/fees the... 38%</td>
<td>4. The party’s relationships... 29%</td>
<td>4. The party’s relationships... 29%</td>
<td>4. The party’s relationships... 30%</td>
</tr>
<tr>
<td>4</td>
<td>5. The type of outcome... 38%</td>
<td>2. Industry practices 29%</td>
<td>5. The type of outcome... 44%</td>
<td>5. The type of outcome... 47%</td>
<td>5. The type of outcome... 39%</td>
</tr>
<tr>
<td>5</td>
<td>2. Industry practices 19%</td>
<td>2. Industry practices 26%</td>
<td>5. The type of outcome... 44%</td>
<td>2. Industry practices 17%</td>
<td>2. Industry practices 20%</td>
</tr>
<tr>
<td>6</td>
<td>Other 1%</td>
<td>Other 2%</td>
<td>Other 2%</td>
<td>Other 3%</td>
<td>Other 1%</td>
</tr>
</tbody>
</table>
### Session 1 Question 4 - Group Results

**What role do parties want providers to take in dispute resolution processes?**

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point).

(3288 points: maximum no. of possible points per answer = 1644 points)

<table>
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<tr>
<th>Rank</th>
<th>Description</th>
<th>Points</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td>The parties decide how the process is conducted and how the dispute is resolved (the providers just assist)</td>
<td>581</td>
<td>35.00%</td>
</tr>
<tr>
<td>2</td>
<td>The providers decide on the process and the parties decide how the dispute is resolved</td>
<td>740</td>
<td>44.00%</td>
</tr>
<tr>
<td>3</td>
<td>The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute</td>
<td>973</td>
<td>58.00%</td>
</tr>
<tr>
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<td>The providers decide on the process and how the dispute is resolved</td>
<td>478</td>
<td>28.00%</td>
</tr>
<tr>
<td>5</td>
<td>The parties decide on the process and the providers decide how the dispute is resolved</td>
<td>467</td>
<td>28.00%</td>
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<tr>
<td></td>
<td>Other</td>
<td>49</td>
<td>3.00%</td>
</tr>
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<td>AVG Rank</td>
<td>Party (user of dispute...)</td>
<td>Advisor: An external lawyer...</td>
<td>Adjudicative Provider: A judge,...</td>
</tr>
<tr>
<td>----------</td>
<td>---------------------------</td>
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<td>---------------------------------------------</td>
</tr>
<tr>
<td>1</td>
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<td>5. The parties initially do... 59%</td>
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<tr>
<td></td>
<td>3. The parties decide on... 42%</td>
<td>1. The parties decide how... 39%</td>
<td>2. The providers decide on... 42%</td>
</tr>
<tr>
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<td>3. The parties decide on... 35%</td>
</tr>
<tr>
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<td>1. The parties decide how... 37%</td>
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<td>4. The providers decide on... 33%</td>
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<td>1. The parties decide how... 24%</td>
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<td>Other 1%</td>
<td>Other 1%</td>
<td>Other 7%</td>
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<tr>
<td>5</td>
<td>5. The parties initially do... 52%</td>
<td>5. The parties initially do... 53%</td>
<td>5. The parties initially do... 59%</td>
</tr>
<tr>
<td></td>
<td>3. The parties decide on... 42%</td>
<td>1. The parties decide how... 39%</td>
<td>2. The providers decide on... 42%</td>
</tr>
<tr>
<td>2</td>
<td>2. The providers decide on... 40%</td>
<td>2. The providers decide on... 38%</td>
<td>3. The parties decide on... 35%</td>
</tr>
<tr>
<td></td>
<td>1. The parties decide how... 37%</td>
<td>1. The parties decide how... 37%</td>
<td>4. The providers decide on... 33%</td>
</tr>
<tr>
<td>4</td>
<td>3. The parties decide on... 28%</td>
<td>4. The providers decide on... 37%</td>
<td>1. The parties decide how... 24%</td>
</tr>
<tr>
<td></td>
<td>Other 1%</td>
<td>Other 1%</td>
<td>Other 7%</td>
</tr>
</tbody>
</table>
What role do parties typically want lawyers (i.e., in-house or external counsel) to take in dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(3192 points: maximum no. of possible points per answer = 1596 points)

5. Speaking for parties and/or advocating on a party's behalf (803) 49.00%

4. Working collaboratively with parties to navigate the process. May request actions on behalf of a party (786) 48.00%

3. Participating in the process by offering expert opinions, not acting on behalf of parties (573) 35.00%

2. Acting as advisors and accompanying parties but not interacting with other parties or providers (538) 33.00%

1. Acting as coaches, providing advice but not attending (297) 18.00%

6. Parties do not normally want lawyers to be involved (151) 9.00%

Other (44) 3.00%
<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer: A...</th>
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<td>5. Speaking for parties and/or...</td>
<td>5. Speaking for parties and/or...</td>
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<td>5. Working collaboratively with parties...</td>
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<td>44%</td>
<td>53%</td>
<td>68%</td>
<td>68%</td>
<td>48%</td>
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<td>4. Working collaboratively with parties...</td>
<td>4. Working collaboratively with parties...</td>
<td>3. Participating in the process...</td>
<td>3. Participating in the process...</td>
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<tr>
<td></td>
<td>43%</td>
<td>48%</td>
<td>55%</td>
<td>31%</td>
<td>46%</td>
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<tr>
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<td>2. Acting as advisors and...</td>
<td>2. Acting as advisors and...</td>
<td>3. Participating in the process...</td>
<td>1. Acting as coaches, providing...</td>
<td>1. Acting as coaches, providing...</td>
</tr>
<tr>
<td></td>
<td>38%</td>
<td>40%</td>
<td>36%</td>
<td>18%</td>
<td>36%</td>
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<td>5. Speaking for parties and/or...</td>
<td>3. Participating in the process...</td>
<td>2. Acting as advisors and...</td>
<td>6. Parties do not normally...</td>
<td>1. Acting as coaches, providing...</td>
</tr>
<tr>
<td></td>
<td>36%</td>
<td>36%</td>
<td>17%</td>
<td>13%</td>
<td>3%</td>
</tr>
<tr>
<td>5</td>
<td>1. Acting as coaches, providing...</td>
<td>6. Parties do not normally...</td>
<td>1. Acting as coaches, providing...</td>
<td>Other</td>
<td>1%</td>
</tr>
<tr>
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<td>28%</td>
<td>5%</td>
<td>13%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>6</td>
<td>6. Parties do not normally...</td>
<td>6. Parties do not normally...</td>
<td>Other</td>
<td>1%</td>
<td>7%</td>
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<td>1%</td>
<td>1%</td>
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<tr>
<td>7</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
</tr>
</tbody>
</table>
What outcomes do providers tend to prioritise?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(3042 points: maximum no. of possible points per answer = 1521 points)

1. Action-focused (e.g. prevent action or require an action from one of the parties) (937) 60.00%
2. Financial (e.g. damages, compensation, etc.) (874) 56.00%
3. Judicial (e.g. setting a legal precedent) (348) 22.00%
4. Psychological (e.g., vindication, closure, being heard, procedural fairness) (393) 25.00%
5. Relationship-focused (e.g. terminate or preserve a relationship) (461) 29.00%

Other (29) 2.00%
### Session 2 Question 1 - Cross sorted Results

<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider: A conciliator,...</th>
<th>Influencer: A researcher, educator,...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1. Action-focused (e.g., prevent action,... 63%</td>
<td>1. Action-focused (e.g., prevent action,... 65%</td>
<td>1. Action-focused (e.g., prevent action,... 68%</td>
<td>1. Action-focused (e.g., prevent action,... 55%</td>
<td>1. Action-focused (e.g., prevent action,... 64%</td>
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<tr>
<td>2</td>
<td>2. Financial (e.g., damages, compensation,... 59%</td>
<td>2. Financial (e.g., damages, compensation,... 60%</td>
<td>2. Financial (e.g., damages, compensation,... 62%</td>
<td>2. Financial (e.g., damages, compensation,... 50%</td>
<td>2. Financial (e.g., damages, compensation,... 62%</td>
</tr>
<tr>
<td>3</td>
<td>3. Judicial (e.g., setting a... 28%</td>
<td>3. Judicial (e.g., setting a... 28%</td>
<td>3. Judicial (e.g., setting a... 28%</td>
<td>4. Psychological (e.g., vindication, closure,... 25%</td>
<td>4. Psychological (e.g., vindication, closure,... 29%</td>
</tr>
<tr>
<td>4</td>
<td>5. Relationship-focused (e.g., terminate or... 33%</td>
<td>5. Relationship-focused (e.g., terminate or... 24%</td>
<td>5. Relationship-focused (e.g., terminate or... 24%</td>
<td>5. Relationship-focused (e.g., terminate or... 43%</td>
<td>3. Judicial (e.g., setting a... 28%</td>
</tr>
<tr>
<td>5</td>
<td>3. Judicial (e.g., setting a... 31%</td>
<td>4. Psychological (e.g., vindication, closure,... 21%</td>
<td>3. Judicial (e.g., setting a... 19%</td>
<td>3. Judicial (e.g., setting a... 14%</td>
<td>5. Relationship-focused (e.g., terminate or... 17%</td>
</tr>
<tr>
<td>6</td>
<td>Other 3%</td>
<td>Other 1%</td>
<td>Other 3%</td>
<td>Other 3%</td>
<td>Other 3%</td>
</tr>
</tbody>
</table>
Session 2 Question 2 - Group Results

In my own experience, the outcome of a commercial and/or civil dispute is determined primarily by:

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point).

(3048 points: maximum no. of possible points per answer = 1524 points)

<table>
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<th>Rank</th>
<th>Answer</th>
<th>Points</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Consensus: the parties’ subjective interests <strong>(879)</strong></td>
<td>56.00%</td>
<td></td>
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<tr>
<td>2</td>
<td>Culture: based cultural and/or religious norms <strong>(319)</strong></td>
<td>20.00%</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Equity: general principles of fairness <strong>(748)</strong></td>
<td>48.00%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Rule of Law: findings of fact and law or other norms <strong>(817)</strong></td>
<td>52.00%</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Status: deferring to authority/hierarchies <strong>(239)</strong></td>
<td>15.00%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>3.00%</td>
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</table>
## Session 2 Question 2 - Cross sorted Results

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<th>AVG Rank</th>
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<th>Advisor: An external lawyer…</th>
<th>Adjudicative Provider: A judge,…</th>
<th>Non-Adjudicative Provider</th>
<th>Influencer: A</th>
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<tr>
<td>1</td>
<td>4. Rule of Law: findings...&lt;br&gt;56%</td>
<td>4. Rule of Law: findings...&lt;br&gt;58%</td>
<td>4. Rule of Law: findings...&lt;br&gt;73%</td>
<td>1. Consensus: the parties’ subjective...&lt;br&gt;69%</td>
<td>4. Rule of Law: findings...&lt;br&gt;56%</td>
</tr>
<tr>
<td>2</td>
<td>1. Consensus: the parties’ subjective...&lt;br&gt;55%</td>
<td>3. Equity: general principles of...&lt;br&gt;56%</td>
<td>1. Consensus: the parties’ subjective...&lt;br&gt;48%</td>
<td>3. Equity: general principles of...&lt;br&gt;45%</td>
<td>3. Equity: general principles of...&lt;br&gt;50%</td>
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<td>1. Consensus: the parties’ subjective...&lt;br&gt;54%</td>
<td>2. Culture: based cultural and/or...&lt;br&gt;17%</td>
<td>4. Rule of Law: findings...&lt;br&gt;40%</td>
<td>1. Consensus: the parties’ subjective...&lt;br&gt;49%</td>
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<tr>
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<td>2. Culture: based cultural and/or...&lt;br&gt;17%</td>
<td>5. Status: deferring to authority/hierarchies&lt;br&gt;12%</td>
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<tr>
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<td>5. Status: deferring to authority/hierarchies&lt;br&gt;17%</td>
<td>5. Status: deferring to authority/hierarchies&lt;br&gt;12%</td>
<td>5. Status: deferring to authority/hierarchies&lt;br&gt;16%</td>
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<td>Other&lt;br&gt;2%</td>
<td>Other&lt;br&gt;2%</td>
<td>Other&lt;br&gt;2%</td>
<td>Other&lt;br&gt;6%</td>
<td>Other&lt;br&gt;1%</td>
</tr>
</tbody>
</table>
Session 2 Question 3
What is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(3036 points: maximum no. of possible points per answer = 1518 points)

4. Reduced costs and expenses (673) 43.00%
1. Better knowledge of the strengths/weaknesses of the case or likelihood of settlement (659) 42.00%
3. Improving or restoring relationships (636) 41.00%
5. Retaining control over the outcome (598) 38.00%
2. Compliance (e.g. avoiding cost sanctions, meeting contractual obligations) (331) 21.00%
6. Tactical/strategic advantage (e.g. delay) (123) 8.00%
Other (16) 1.00%
<table>
<thead>
<tr>
<th>Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3. Improving or restoring relationships</td>
<td>1. Better knowledge of the...</td>
<td>4. Reduced costs and expenses</td>
<td>5. Retaining control over the...</td>
<td>3. Improving or restoring relationships</td>
</tr>
<tr>
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<td>49%</td>
<td>55%</td>
<td>55%</td>
<td>60%</td>
<td>44%</td>
</tr>
<tr>
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<td>1. Better knowledge of the...</td>
<td>3. Improving or restoring relationships</td>
<td>1. Better knowledge of the...</td>
<td>4. Reduced costs and expenses</td>
<td>1. Better knowledge of the...</td>
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<td>47%</td>
<td>39%</td>
<td>45%</td>
<td>47%</td>
<td>42%</td>
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<td>3</td>
<td>4. Reduced costs and expenses</td>
<td>4. Reduced costs and expenses</td>
<td>3. Improving or restoring relationships</td>
<td>3. Improving or restoring relationships</td>
<td>5. Retaining control over the...</td>
</tr>
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<td>43%</td>
<td>38%</td>
<td>38%</td>
<td>41%</td>
<td>36%</td>
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<tr>
<td>4</td>
<td>5. Retaining control over the...</td>
<td>2. Compliance (e.g. avoiding cost...)</td>
<td>5. Retaining control over the...</td>
<td>1. Better knowledge of the...</td>
<td>2. Compliance (e.g. avoiding cost...)</td>
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<tr>
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<td>25%</td>
<td>28%</td>
<td>28%</td>
<td>32%</td>
<td>23%</td>
</tr>
<tr>
<td>5</td>
<td>6. Tactical/strategic advantage (e.g. delay)</td>
<td>6. Tactical/strategic advantage (e.g. delay)</td>
<td>2. Compliance (e.g. avoiding cost...)</td>
<td>2. Compliance (e.g. avoiding cost...)</td>
<td>6. Tactical/strategic advantage (e.g. delay)</td>
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<td>10%</td>
<td>12%</td>
<td>17%</td>
<td>16%</td>
<td>9%</td>
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<td>Other</td>
<td>6. Tactical/strategic advantage (e.g. delay)</td>
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<td>Other</td>
<td>2%</td>
</tr>
<tr>
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<td>1%</td>
<td>7%</td>
<td>3%</td>
<td>2%</td>
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</tr>
<tr>
<td>7</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
<td>Other</td>
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<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>2%</td>
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</tr>
</tbody>
</table>
Who is primarily responsible for ensuring parties understand their process options, and the possible consequences of each process before deciding which one to use?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2964 points: maximum no. of possible points per answer = 1482 points)

1. Adjudicative Providers: judges and arbitrators or their organisations (505) 33.00%
2. External lawyers (781) 51.00%
3. Governments/ministries of justice (218) 14.00%
4. In-house lawyers (647) 42.00%
5. Non-Adjudicative Providers: mediators and conciliators or their organisations (505) 33.00%
6. Parties (non-legal personnel) (291) 19.00%

Other (17) 1.00%
<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer: A researcher,</th>
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<td>51%</td>
<td>60%</td>
<td>63%</td>
<td>54%</td>
<td>50%</td>
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<td>2.External lawyers</td>
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<td>21%</td>
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<td>24%</td>
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<td>1%</td>
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</tbody>
</table>
Currently, the most effective dispute resolution processes usually involve which of the following?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2898 points: maximum no. of possible points per answer = 1449 points)

1. Adjudicative dispute resolution methods (litigation or arbitration) (384) 26.00%

2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) (637) 43.00%

3. Encouragement by courts, tribunals or other providers to reduce time and/or costs (450) 30.00%

4. Non-adjudicative dispute resolution methods (mediation or conciliation) (646) 43.00%

5. Pre-dispute or pre-escalation processes to prevent disputes (575) 39.00%

6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings) (200) 13.00%

Other (6) 0.00%
<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute…)</th>
<th>Advisor: An external lawyer…</th>
<th>Adjudicative Provider: A judge,…</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1. Pre-dispute or pre-escalation processes… 43%</td>
<td>1. Adjudicative dispute resolution methods… 40%</td>
<td>5. Pre-dispute or pre-escalation processes… 42%</td>
<td>5. Pre-dispute or pre-escalation processes… 44%</td>
<td>1. Adjudicative dispute resolution methods… 35%</td>
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<td>3. Encouragement by courts, tribunals… 29%</td>
<td>5. Pre-dispute or pre-escalation processes… 34%</td>
<td>3. Encouragement by courts, tribunals… 30%</td>
<td>3. Encouragement by courts, tribunals… 29%</td>
<td>3. Encouragement by courts, tribunals… 30%</td>
</tr>
<tr>
<td>5</td>
<td>1. Adjudicative dispute resolution methods… 29%</td>
<td>4. Non-adjudicative dispute resolution 30%</td>
<td>1. Adjudicative dispute resolution methods… 29%</td>
<td>6. Technology to enable faster,… 12%</td>
<td>6. Technology to enable faster,… 20%</td>
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<td>6. Technology to enable faster,… 13%</td>
<td>6. Technology to enable faster,… 14%</td>
<td>6. Technology to enable faster,… 13%</td>
<td>1. Adjudicative dispute resolution methods… 11%</td>
<td>Other 1%</td>
</tr>
<tr>
<td>7</td>
<td>Other 1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Session 3 Question 1- Group Results

What are the main obstacles or challenges parties face when seeking to resolve commercial and/or civil disputes?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2874 points: maximum no. of possible points per answer = 1437 points)

4. Insufficient knowledge of options available to resolve disputes (750) 51.00%

2. Financial or time constraints (714) 48.00%

1. Emotional, social, or cultural constraints (602) 41.00%

5. Uncertainty (e.g. unpredictable behaviour or lack of confidence in providers) (443) 30.00%

3. Inadequate range of options available to resolve disputes (328) 22.00%

Other (37) 3.00%
<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
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<td>1</td>
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<td>2. Financial or time constraints 55%</td>
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</tr>
<tr>
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<td>1. Emotional, social, or cultural... 40%</td>
<td>1. Emotional, social, or cultural... 40%</td>
<td>4. Insufficient knowledge of options... 51%</td>
<td>1. Emotional, social, or cultural... 45%</td>
<td>2. Financial or time constraints 50%</td>
</tr>
<tr>
<td>3</td>
<td>5. Uncertainty (e.g. unpredictable behaviour) 33%</td>
<td>4. Insufficient knowledge of options... 45%</td>
<td>5. Uncertainty (e.g. unpredictable behaviour) 42%</td>
<td>2. Financial or time constraints 40%</td>
<td>1. Emotional, social, or cultural... 38%</td>
</tr>
<tr>
<td>4</td>
<td>3. Inadequate range of options... 28%</td>
<td>3. Inadequate range of options... 28%</td>
<td>1. Emotional, social, or cultural... 30%</td>
<td>5. Uncertainty (e.g. unpredictable behaviour) 30%</td>
<td>5. Uncertainty (e.g. unpredictable behaviour) 31%</td>
</tr>
<tr>
<td>5</td>
<td>Other 4%</td>
<td>5. Uncertainty (e.g. unpredictable behaviour) 24%</td>
<td>3. Inadequate range of options... 16%</td>
<td>3. Inadequate range of options... 17%</td>
<td>3. Inadequate range of options... 25%</td>
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<td>Other 1%</td>
<td>Other 4%</td>
<td>Other 4%</td>
<td>Other 4%</td>
<td>Other 4%</td>
</tr>
</tbody>
</table>
Session 3 Question 2 - Group Results

To improve the future of dispute resolution and access to justice, which of the following processes and tools should be prioritised?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2868 points: maximum no. of possible points per answer = 1434 points)

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<th>Points</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>Pre-dispute or pre-escalation processes to prevent disputes</td>
<td>623</td>
<td>42.00%</td>
</tr>
<tr>
<td>Non-adjudicative dispute resolution methods (mediation or conciliation)</td>
<td>604</td>
<td>41.00%</td>
</tr>
<tr>
<td>Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation)</td>
<td>577</td>
<td>39.00%</td>
</tr>
<tr>
<td>Encouragement by courts, tribunals or other providers to reduce time and/or costs</td>
<td>516</td>
<td>35.00%</td>
</tr>
<tr>
<td>Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings)</td>
<td>308</td>
<td>21.00%</td>
</tr>
<tr>
<td>Adjudicative dispute resolution methods (litigation or arbitration)</td>
<td>225</td>
<td>15.00%</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
<td>1.00%</td>
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<tr>
<td>AVG Rank</td>
<td>Party (user of dispute)</td>
<td>Advisor: An external lawyer...</td>
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</tr>
<tr>
<td>1</td>
<td>2. Combining adjudicative and non-adjudicative... (46%)</td>
<td>2. Combining adjudicative and non-adjudicative... (42%)</td>
</tr>
<tr>
<td>2</td>
<td>5. Pre-dispute or pre-escalation processes... (43%)</td>
<td>3. Encouragement by courts, tribunals... (40%)</td>
</tr>
<tr>
<td>3</td>
<td>4. Non-adjudicative dispute resolution (36%)</td>
<td>5. Pre-dispute or pre-escalation processes... (34%)</td>
</tr>
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<td>3. Encouragement by courts, tribunals... (35%)</td>
<td>1. Adjudicative dispute resolution methods... (20%)</td>
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<td>5</td>
<td>6. Technology to enable faster,... (22%)</td>
<td>6. Technology to enable faster,... (16%)</td>
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<td>1. Adjudicative dispute resolution methods... (18%)</td>
<td>1. Adjudicative dispute resolution methods... (23%)</td>
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<td>Rank</td>
<td>Description</td>
<td>Points</td>
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<td>1</td>
<td>Accreditation or certification systems for dispute resolution providers</td>
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<td>2</td>
<td>Cost sanctions against parties for failing to try non-adjudicative processes before litigation/arbitration.</td>
<td>526</td>
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<tr>
<td>3</td>
<td>Legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation</td>
<td>726</td>
</tr>
<tr>
<td>4</td>
<td>Quality control and complaint mechanisms applicable to dispute resolution providers</td>
<td>448</td>
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<tr>
<td>5</td>
<td>Use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out)</td>
<td>604</td>
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<td>6</td>
<td>Rules governing third party funding</td>
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<td>AVG Rank</td>
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<td>Advisor: An external lawyer...</td>
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<td>3. Legislation or conventions that...</td>
<td>3. Legislation or conventions that...</td>
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<td>54%</td>
<td>49%</td>
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<tr>
<td>2</td>
<td>5. Use of protocols promoting...</td>
<td>2. Cost sanctions against parties...</td>
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<td>40%</td>
<td>42%</td>
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<tr>
<td>3</td>
<td>4. Quality control and complaint...</td>
<td>5. Use of protocols promoting...</td>
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<td>1. Accreditation or certification systems...</td>
<td>4. Quality control and complaint...</td>
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<td>36%</td>
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<td>1. Accreditation or certification systems...</td>
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<td>34%</td>
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</table>
**Session 3 Question 4 - Group Question**

Which stakeholders are likely to be most resistant to change in dispute resolution practice?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).  
(2838 points: maximum no. of possible points per answer = 1419 points)

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<th>Stakeholder</th>
<th>Points</th>
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<tbody>
<tr>
<td>External lawyers</td>
<td>921</td>
<td>63.00%</td>
</tr>
<tr>
<td>Adjudicative Providers: judges and arbitrators or their organisations</td>
<td>598</td>
<td>41.00%</td>
</tr>
<tr>
<td>Governments/ministries of justice</td>
<td>465</td>
<td>32.00%</td>
</tr>
<tr>
<td>In-house lawyers</td>
<td>402</td>
<td>28.00%</td>
</tr>
<tr>
<td>Parties (non-legal personnel)</td>
<td>284</td>
<td>20.00%</td>
</tr>
<tr>
<td>Non-Adjudicative Providers: mediators and conciliators or their organisations</td>
<td>145</td>
<td>10.00%</td>
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<td>Other</td>
<td>23</td>
<td>2.00%</td>
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<tr>
<td>AVG Rank</td>
<td>Party (user of dispute)</td>
<td>Advisor: An external lawyer...</td>
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<tr>
<td>1</td>
<td>2. External lawyers</td>
<td>2. External lawyers</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>61%</td>
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<td>1. Adjudicative Providers: judges and...</td>
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<td></td>
<td>48%</td>
<td>34%</td>
</tr>
<tr>
<td></td>
<td>3. Governments/ministries of justice</td>
<td>48%</td>
</tr>
<tr>
<td></td>
<td>4. In-house lawyers</td>
<td>34%</td>
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<td>19%</td>
<td>26%</td>
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<td>18%</td>
<td>9%</td>
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<td></td>
<td>6. Parties (non-legal personnel)</td>
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<tr>
<td></td>
<td>16%</td>
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<tr>
<td>7</td>
<td>Other</td>
<td>Other</td>
</tr>
</tbody>
</table>
Session 3 Question 5 - Group Results
Which stakeholders have the potential to be most influential in bringing about change in dispute resolution practice?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2790 points: maximum no. of possible points per answer = 1395 points)

1. Adjudicative Providers: judges and arbitrators or their organisations (605) 42.00%
2. External lawyers (458) 32.00%
3. Governments/ministries of justice (577) 40.00%
4. In-house lawyers (422) 30.00%
5. Non-Adjudicative Providers: mediators and conciliators or their organisations (356) 25.00%
6. Parties (non-legal personnel) (351) 25.00%

Other (21) 1.00%
### Session 3 Question 5 - Cross sorted Results

<table>
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<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)...</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>3. Governments/ministries of justice 49%</td>
<td>2. External lawyers 45%</td>
<td>1. Adjudicative Providers: judges and... 50%</td>
<td>1. Adjudicative Providers: judges and... 46%</td>
<td>3. Governments/ministries of justice 40%</td>
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<td>1. Adjudicative Providers: judges and... 45%</td>
<td>1. Adjudicative Providers: judges and... 39%</td>
<td>2. External lawyers 40%</td>
<td>3. Governments/ministries of justice 45%</td>
<td>1. Adjudicative Providers: judges and... 38%</td>
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<tr>
<td>7</td>
<td>Other 3%</td>
<td>Other 1%</td>
<td>Other 1%</td>
<td>Other 3%</td>
<td>Other 1%</td>
</tr>
</tbody>
</table>
Session 4 Question 1 - Group Results

Who has the greatest responsibility for taking action to promote better access to justice?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2790 points: maximum no. of possible points per answer = 1395 points)

3. Governments/ministries of justice (912) 64.00%
1. Adjudicative Providers: judges and arbitrators or their organisations (736) 51.00%
2. External lawyers (425) 30.00%
5. Non-Adjudicative Providers: mediators and conciliators or their organisations (263) 18.00%
4. In-house lawyers (253) 18.00%
6. Parties (non-legal personnel) (190) 13.00%
Other (11) 1.00%
### Session 4 Question 1 - Cross sorted Results

<table>
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<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer</th>
<th>Adjudicative Provider: A judge, …</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>2. External lawyers 32%</td>
<td>2. External lawyers 42%</td>
<td>2. External lawyers 30%</td>
<td>2. External lawyers 23%</td>
<td>2. External lawyers 24%</td>
</tr>
<tr>
<td>6</td>
<td>5. Non-Adjudicative Providers: mediators 15%</td>
<td>6. Parties (non-legal personnel) 10%</td>
<td>6. Parties (non-legal personnel) 9%</td>
<td>Other 1%</td>
<td>Other 2%</td>
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<td>Other 2%</td>
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</table>
Session 4 Question 2
What is the most effective way to improve parties' understanding of their options for dispute resolution? (Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).
(2802 points: maximum no. of possible points per answer = 1401 points)

2. Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options (821) 57.00%

3. Procedural requirements for all legal personnel and parties to declare they have considered non-adjudicative dispute resolution options before initiating arbitration or litigation (531) 37.00%

5. Requiring parties to attempt non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration (511) 36.00%

4. Providing access to experts to guide parties in selecting the most appropriate dispute resolution process(es) (401) 28.00%

Other (17) 1.00%
<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute...)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2. Education in business and/or... 62%</td>
<td>2. Education in business and/or... 65%</td>
<td>2. Education in business and/or... 55%</td>
<td>2. Education in business and/or... 58%</td>
<td>1. Creating collaborative dispute resolution... 44%</td>
</tr>
<tr>
<td>2</td>
<td>1. Creating collaborative dispute resolution... 44%</td>
<td>3. Procedural requirements for all... 42%</td>
<td>3. Procedural requirements for all... 41%</td>
<td>5. Requiring parties to attempt... 46%</td>
<td>1. Creating collaborative dispute resolution... 39%</td>
</tr>
<tr>
<td>3</td>
<td>5. Requiring parties to attempt... 38%</td>
<td>1. Creating collaborative dispute resolution... 37%</td>
<td>1. Creating collaborative dispute resolution... 33%</td>
<td>3. Procedural requirements for all... 36%</td>
<td>4. Providing access to experts... 38%</td>
</tr>
<tr>
<td>4</td>
<td>3. Procedural requirements for all... 34%</td>
<td>5. Requiring parties to attempt... 30%</td>
<td>4. Providing access to experts... 27%</td>
<td>1. Creating collaborative dispute resolution... 34%</td>
<td>3. Procedural requirements for all... 36%</td>
</tr>
<tr>
<td>5</td>
<td>4. Providing access to experts... 27%</td>
<td>4. Providing access to experts... 28%</td>
<td>Other 1%</td>
<td>4. Providing access to experts... 26%</td>
<td>5. Requiring parties to attempt... 29%</td>
</tr>
<tr>
<td>6</td>
<td>Other 1%</td>
<td></td>
<td></td>
<td>Other 3%</td>
<td></td>
</tr>
</tbody>
</table>
Session 4 Question 3 - Group Results

To promote better access to justice, where should policy makers, governments and administrators focus their attention?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point).

(2790 points: maximum no. of possible points per answer = 1395 points)

1. Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation (640) 45.00%

2. Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can “opt-out” of before adjudicative processes can be initiated (673) 47.00%

3. Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings (712) 50.00%

4. Reducing pressures on the courts to make them more efficient and accessible (284) 20.00%

5. Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes (458) 32.00%

Other (23) 2.00%
### Session 4 Question 3 - Cross sorted Results

<table>
<thead>
<tr>
<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
<th>Adjudicative Provider: A judge,...</th>
<th>Non-Adjudicative Provider:</th>
<th>Influencer:</th>
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<td>1. Legislation or conventions promoting... 53%</td>
<td>3. Pre-dispute or early stage... 55%</td>
<td>2. Making non-adjudicative processes (mediation... 53%</td>
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<td>2. Making non-adjudicative processes (mediation... 43%</td>
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Session 4 Question 4 - Group Results
Which of the following will have the most significant impact on future policy-making in dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point).

(2772 points: maximum no. of possible points per answer = 1386 points)

2. Demand for increased efficiency of dispute resolution processes, including through technology. (806) 57.00%
4. Demand for increased transparency (456) 32.00%
6. Demand for processes that allow parties to represent themselves, without lawyers (295) 21.00%
3. Demand for increased rights of appeal/oversight of adjudicative providers (243) 17.00%
Other (24) 2.00%
### Session 4 Question 4 - Cross sorted Results

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<th>AVG Rank</th>
<th>Party (user of dispute)</th>
<th>Advisor: An external lawyer...</th>
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Session 4 Question 5 - Group Results
What innovations/trends are going to have the most significant influence on the future of dispute resolution?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’ = 3 points, ‘2nd choice’ = 2 points, ‘3rd choice’ = 1 point).

(2772 points: maximum no. of possible points per answer = 1386 points)

3. Greater emphasis on collaborative instead of adversarial processes for resolving disputes (745) 53.00%

2. Changes in corporate attitudes to conflict prevention (626) 44.00%

5. Harmonisation of international laws and standards for dispute resolution systems (335) 24.00%

6. Technological innovation (e.g. online dispute resolution) (311) 22.00%

4. Greater emphasis on personal wellbeing and stress reduction of parties (251) 18.00%

Other (17) 1.00%
### Session 4 Question 5 - Cross sorted Results

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<th>AVG Rank</th>
<th>Party (user of dispute)</th>
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### Notes
- The table represents the average rank of each characteristic across different user types.
- The percentages indicate the proportion of each characteristic across the different categories.