

The Advantages and Disadvantages of Mediation in the Chinese Commercial Arbitration Process

Karwan A. Perot*

This paper reviews presents the advantages and disadvantages of mediation in Chinese commercial arbitration process to resolve disputes. Mediation can be considered as a principal means for resolution of commercial disputes, both domestically and internationally. Simply, to mediate means to act as a peacemaker between dispute parties. Basically, mediation is an informal mechanism in which the disputants are assisted by a neutral third party toward settlement. The mediators are appointed in a voluntary base to help disputants manage the resolution process. They should have no direct interest in the conflict and its outcome, and no power to render a decision, but just can control the process. Meanwhile, parties are entitled to accept or reject the outcome. Mediation shares the advantages of confidentiality, flexibility, and simplicity. Dispute of disadvantages still remaining, China's mediation system has century's history so far. Currently, China has used mediation method in arbitral proceedings so as to improve the efficiency of dispute resolution.

Keywords: Mediation, Arbitration, Neutral Litigation, Commercial Disputes, Dispute Resolution, Proceeding

* Lecturer at the University of Kurdistan- Hewler Kurdistan Business School in Erbil, Iraq. B.A./ BSc./LL.B. (La Trobe Univ.), LL.M. (Melbourne). ORCID: <https://orcid.org/0000-0002-5012-2095>. The author may be contacted at: karwan.perot@ukh.edu.krd / Address: University of Kurdistan- Hewler - Kurdistan Business School- 30 Meter Avenue- Erbil- Iraq

1. Introduction

Mediation is a form of Alternative Dispute Resolution (“ADR”) that is exercised by a third party to resolve a commercial dispute between disputants. It can be defined as a process whereby a neutral third party assists and facilitates negotiations between the disputing parties to encourage them to voluntarily reach an agreement to resolve their dispute and find a consensual outcome.¹ The mediation process starts when “two or more people or companies are unable to resolve a particular problem [and] they invite a neutral person to help them arrive at a solution. The neutral person, or mediator, will work hard with each side and help them to understand better their own and the other person’s position, and explore alternative solutions.”² Moreover, mediator acts as a peacemaker among disputants advising and consulting impartially with the parties to help reach in a mutually agreeable solution to the problem. In contrast to the judge or arbitrators, however, mediator has no power to impose a resolution on disputing parties.³

China has a long history of practicing mediation as a part of ADR. Historians state that mediation was already widely practiced in ancient China based on the Confucian philosophy consisting of harmony, peace, and compromise. Such philosophy views the process of mediation as an optimum settlement of a dispute to be achieved by moral suasion and compromise instead of by sovereign coercion.⁴ Furthermore, during the Mao era (1949-76), mediation continued to be the most popular means for resolving disputes.⁵

Since the 1990s when China’s economy has rapidly developed, foreign companies have been investing in China and doing business with Chinese partners. These trend has increased the number of commercial disputes between foreign investors and their Chinese partners.⁶ In this course, mediation mechanism has successfully addressed many kinds of disputes in China, such as maritime, divorce and family, economic, and international trade.⁷ Today, mediation is a principal mode of resolving disputes in China. This essay will discuss main advantages and disadvantages of mediation in China.

2. The Advantages of Mediation Process

To settle commercial disputes with foreign investors without resorting to

litigation, at different administrative levels, the Chinese government has established some mechanisms such as mediation panels and complaint centers.⁸ There are major commercial centers in Beijing and Shanghai which could identify the disputes between parties. For instance, the mediation and arbitration system has effectively addressed the foreign trade and investment cases. In particular, mediation has been well reputed in China for some such advantage⁹ as speed, flexibility, confidentiality, reducing costs, voluntariness, reducing the formality, increasing satisfaction, maintenance and improving business relationships, non-binding nature, and neutrality.

A. Speed

The most obvious advantage is speed of resolution. The proponents of mediation believe that most mediation last one day and can be set up within weeks.¹⁰ Therefore, mediation can be faster and cheaper than litigation in the court. Professional mediators have improved their experiences in designing mediation procedures that are timely efficient and minimizing disruption to the ordinary business parties in mediation proceedings.¹¹ Usually, the dispute process would take a long time before entering the mediation itself.¹² In order to avoid substantive hearing and the some extra legal fees, the mediation supporters require disputing parties to practice mediation because it is an efficient way of reaching an early resolution. Mediators would facilitate to bring parties closer together. Or, through giving an early addressing of the outcome of the formal proceedings, mediators will often encourage the parties to resolve their dispute via mediation more efficiently. For example, recently the secretary general of the China International Economic and Trade Arbitration Commission (“CIETAC”), Jianlong Yu, stated that [20 -30%] of CIETAC’s caseload is settled by practicing this method each year.¹³ Thus, the efficiency in terms of time can be a motivation giving mediation an advantage over litigation or arbitration.

B. Flexibility

Mediation in Chinese commercial arbitration promotes stability and flexibility. Flexibility means that mediation can be brought forward at any stage after the hearing begins.¹⁴ Actually, mediation is not conducted under a fixed set of rules. It is different from the court process. It can easily meet the needs of the disputing

parties, which usually consist of the location, the people (parties), the time, the acceptable criteria, and many other options related to the mediation process.¹⁵ For instance, on July 24, 2009, the Supreme People's Court of China issued the "Opinions on Establishing and Improving a Mechanism to Solve Conflicts and Disputes Linking Litigation with Non-litigation," which stated that the dispute parties or the people's courts have the fully right to choose their mediator as a dispute resolution method to solve their conflicts.¹⁶ Since mediation occurs with the consent of both parties and under the supervision of the mediator, it provides flexibility and creativity in procedure to reach an agreement.

C. Confidentiality

Confidentiality is another advantage of mediation. It refers to keep the disputes from the public domain. A mediator is bound not to reveal any of the information that s/he hears and records from one party of the dispute to the other or to anyone else without permission. In order to assist the parties to understand their own interests and the requirements of the other party, mediator will meet each party separately in a private caucus.¹⁷ The mediator is required to keep confidential during the whole mediation process. This requirement should be recorded in an agreement between mediator and interested parties.¹⁸ Moreover, the mediation proceedings are private and attendance is limited just to the disputing parties and their legal advisers, if any.¹⁹ In China, all communications between disputing parties and mediator are also considered strictly confidential and may not be disclosed to the public.²⁰ This setting provides the parties with further assurance to participate in the mediation process with open-mind.

D. Lower cost

Mediation can be preferable to litigation for lower cost. Clearly, a short mediation is a cheaper event than a trial or even arbitration. Regarding the regulation of monetary system of mediation, the Chinese mediation system does not provide the fixed rules and regulations. Therefore, the mediators are basically free to determine the amount of fees that should be paid by the disputant parties. Moreover, the mediation fees adopted by the South Mediation Center of CIETAC can represent all other mediation institutions in China. For example, if the dispute amount does not exceed RMB 100,000, the lowest mediation fee will be charged

not less than RMB 1,500.²¹ The litigation fee is higher than mediation fee because it includes three types of fees (pre-litigation cost, lawyer fees, and court and preservation fees). All these fees should be paid by the disputant parties.²² During the mediation process, the mediators usually do not demand extra registration fees, management fees, etc. When the interested parties of the dispute resolution will reach the agreement as a result of successful mediation, documents are more easily completed and rendered.²³ In addition, mediation process can reduce the cost of errors and direct cost of dispute resolution, because the parties have a greater chance to contribute to the resolution and outcome of the case during the mediation process. Even if they are not able to reach a settlement through mediation, the rate of the charge to a reduced award decreases significantly.²⁴ The mediation process in China would also cost relatively lower than litigation.²⁵ Some mediation expertise argues that lawyers are unnecessary in the mediation process, which leads to further cost savings.²⁶

E. Voluntariness

Voluntariness is another essential component of mediation in China. The disputant parties are generally participating in mediation on a voluntary basis pursuant to an agreement between them.²⁷ Voluntariness in the mediation process does not mean that the interested parties of the dispute resolution are participating without pressure to settle their dispute. Rather, it refers to the ability of the disputants to accept or reject a particular outcome of mediation which is considered as a consistent element of mediation across time and culture.²⁸ Furthermore, mediation is a consensual process which allows the disputant parties to control the proceedings. Here, the interested parties of the resolution voluntarily can agree on the mediator and the procedures for the mediation. The supporters of mediation argue that most people in China depend on mediation which, they believe, is a more satisfactory process than the terms of resolution imposed by a court.²⁹ Therefore, only if the parties voluntarily accept this principle, mediation could obtain jurisdiction in China. The party autonomy principle is thus a common ground on the arbitration and mediation in China. During mediation the disputant parties' free will is paramount and indispensable. With the consent of any party, the mediation can be terminated at any time before the mediation settlement agreement is rendered by the panel.³⁰ Thus, the

Chinese disputant parties have the entire power either to enter or exit from the jurisdiction.³¹

F. Informality

Mediation is an informal process which is designed to the needs of parties. According to Article 47 of CIETAC Arbitration Rules, there is no set of rules to be followed; a tribunal may conduct mediation in any way it deems appropriate.³² The mediator allows the disputants to present their arguments in an informal manner so that they will not be bound by any complex legal procedures. Furthermore, mediation is a form of guided dialogue where parties have the full ability to express themselves for reaching an agreed solution.³³ Thus, mediation process would encourage the parties to feel that they have more freedom in expressing their demands and making decisions about the fate of their dispute.

G. More satisfaction with outcomes

Mediation is to provide greater satisfaction with outcome.³⁴ Mediation supporters argue that its process and outcomes are more satisfying the parties than a trial or arbitration. Any resolutions that might be reached by agreement or consensus in mediation can be viewed as producing higher levels of satisfaction for the parties than other forms of imposed decisions such as litigation or arbitration.³⁵ The most distinguishable mediation process is known as Med- Arb., which is the combination between mediation and arbitration. It used to settle the disputes between parties in China. Additionally, Med-Arb mechanism has evolved independently, mutually, and exclusively. First, the neutral party invokes the techniques of mediation for a settlement. If not successful, an arbitrator will then work with dispute parties toward a resolution. In order to achieve an adequate resolution of the commercial disputes, the Chinese culture and current Chinese domestic legislation have predisposed to enhancing the Med-Arb process.³⁶ Therefore, both the opportunity of achieving participant satisfaction, and early resolution and outcomes are the most relevant and important reasons for referring matters to mediation in China.

H. Maintaining and improving business relationship

Improving the relationship between disputants can be considered as one of

the main reasons of practicing mediation as an alternative to arbitration in China. In mediation process, the parties can understand the motive, interests, and needs of each other. Through this understanding they can preserve and improve their relationships as well as settle their disputes.³⁷ Also, mediation involves a great deal of mutual communication and understanding. This maintenance of communication is very beneficial for them to continue the long term business relationships. Even if the disputants are not able to resolve their dispute, they could still participate in the mediation which might lead to improve communications and understanding.³⁸ In terms of business cooperation, successful mediation can create the stability in the economic relationship between parties and supports to reduce or end the complex legal disputes. Likewise, Arb-Med process may result in an explicit and new resolution agreement in which both parties have approved. Similarly, the Chinese mediators have noticed that during the mediation process, the disputants are cooperating and communicating with each other to meet mutual interest and reach a desirable settlement.³⁹

I. Non-Binding nature

Mediation has another benefit which is known as not binding. The parties can preserve their rights to the future dispute. Therefore, unless the parties reach the resolution, the mediation records will remain confidential and the parties' respective rights will not be encroached.⁴⁰ Furthermore, if the disputants are not happy with the process or the outcome, they have the full right to go to another mechanism to resolve their dispute.⁴¹ In other words, the parties will be bound by the mediation only to settle their dispute. Since the mediation mechanism in China has been considered as non-adversarial approach and informal process, the local and international disputants in China are not binding to the resolution. In case of Hong Kong, Chinese people are free to enhance any other means of dispute settlement such as arbitration or litigation.⁴² Thus, the significant mission of the mediation is to assist the parties to reach the resolution or an agreement about their dispute.

J. Neutrality

Neutrality can be considered as another advantage of mediation. In mediation, the parties are able to create resolutions based on their own interests.⁴³

Additionally, mediations are neutral and will listen to the parties' discussion on the needs of both sides. If a party has a problem or difficulty in identifying the elements of their position, a skilled mediator can ensure each party of the dispute to effectively put their position forward. In China, mediators would provide an opportunity to minimize cultural differences that might occur between Chinese and foreign parties. For instance, in order to reduce the hostility between the disputant parties, Chinese mediators would facilitate to exchange information and share the different cultural ideas between parties. If parties have different cultural background, during the mediation process, they must face each other and engage in the direct conversation. This helps to minimize the differences between them as it is not adversarial approach. Therefore, Chinese people usually name mediation as reconcile method to solve their disputes.⁴⁴ Likewise, in China, even if the parties face any difficulty in identifying elements skilled neutral mediators will listen to each party and ensure its own position effectively.

3. The Main Disadvantages of Mediation Process

A. Not yet an alternative to arbitration

Mediation in China used to be criticized because disputants should appoint mediators to conciliate their case rather than arbitrators. The 2012 Amended CIETAC Arbitration Rules have formally recognized the possibility that the parties of the case will be able to appoint non-arbitrators to mediate or conciliate their case. Although the China Chamber of International Commerce and Mediation Centre of the China Council for the Promotion of International Trade has been working since the 1980s, mediation is not yet a fully-fledged alternative to arbitration.⁴⁵ Thus, in China, only a few types of mediation are popular such as People's Mediation Committees or labor mediation.

B. Risk of disclosing some important information

The disputants are normally worried that their arguments would be revealed to the other party when the mediation is not successful and the case proceeds to trial.⁴⁶ In addition, there is a risk that a mediator's neutrality or impartiality may be affected by overseeing a facilitative mediation. Opponents of mediation would

argue that it may be hard for a mediator not to be influenced by the disputants during the course of negotiations.⁴⁷ Furthermore, the mediator's impartiality may be affected by overseeing a facilitative mediation.⁴⁸ Therefore, the interested parties may fear that the mediator would disclose the secret obtained from the mediation process and in turn could use it against them by the other party if the mediation is unsuccessful. Although Article 7 of People's Mediation Law states that neither Chinese mediators nor those involved in the administration of the mediation process are allowed disclosing the information that collected during the mediation process from the dispute parties,⁴⁹ such risk still remains.

C. The mediation process may not be fast and inexpensive

In some cases, the mediation process in China may lengthen the time and increase the cost of dispute settlement. For example, if mediation fails, the time and cost of the process would probably rise with an additional burden on the disputants. The parties would make another proposal to mediate after failing the first mediation proposal. It is, however, time-consuming and expensive to collect evidence and hear witnesses again.⁵⁰ Due to the professional judges and systematic process, litigation could be more attractive. Considering stricter time deadlines for completing cases and heavier caseloads, mediators also found that mediating cases would take more time on an hourly basis than simply trying the case.⁵¹

D. Diminishing the satisfaction of the resolution

As mediation is not a binding method, mediators have no power to impose a duty on the parties. Furthermore, mediation can rarely produce a satisfactory settlement unless both parties to a dispute have fully accepted a resolution.⁵² Moreover, when a mediator knows that s/he can settle a case by coercing the disputants to a resolution, the value of mediation will be compromised. So, such compromised resolution may be perceived by the disputants as a result of imposed decision by a mediator, so that it would lead to diminishing the degree of satisfaction of the settlement.⁵³ Therefore, coercing the decision is another disadvantage of commercial mediation in China which reduces the disputants' satisfaction.

E. No right to appeal the decision

Parties have no right to appeal a decision even if the mediator makes a mistake in fact or law. They may accept or reject the decision regarding the case. Article 31 of the Chinese Mediation Rules stated that, if the mediation is failed, no party from the same dispute may take any proposal or suggestion as the basis for appeal or defense.⁵⁴ In addition, there is no jury or panel of mediators during the mediation process. Only one mediator is serving for negotiation between parties.⁵⁵ From the claimant's point of view, it may be a serious drawback of mediation in China.

F. No right to appoint their mediator

Generally, Chinese mediators have little contact with disputants or their lawyers prior to the plenary session of the mediation. Therefore, the mediators would have no ideas about the specific needs of the parties regarding their dispute. In addition, the parties and their lawyers could not appoint a mediator of their choice. Rather, a mediator will be appointed by Chinese arbitral bodies which conduct mediation throughout the course of arbitration proceedings.⁵⁶ If the parties and their attorneys have the right to appoint their mediator, they could appoint a mediator who has not only fully experienced mediation process, but also known general expertise of the subject matter. Also, it rarely happens that mediator has specific expertise on the issue of the dispute.⁵⁷ Thus, appointing mediators are considered as other limitations of mediation in China.

G. A tactic of delaying the process

Mediation will be useful, for example, if either the other side has no intention to settle but just wants to use it as a delaying tactic, or one or more of the parties hope to bring the case to the public.⁵⁸ For instance, in economic dispute, mediation is often abused by the Chinese debtor as a tactic to delay paying the debt. Therefore, the case may take a long time to reach a mediation agreement between dispute parties. If the debtor does not enforce the agreement voluntarily, the other party or creditor may take the case to the court-litigation.⁵⁹

H. The risk of using mediator's comments

Mediators are sometimes giving comments to both parties of the dispute. This

would happen when the mediation has failed without final resolution. From the Chinese perspective, if mediation is unsuccessful, there is a risk that the parties will use the mediator's comments on the strength and weaknesses of the parties' positions to improve their arguments and present extra evidence, thereby gaining an advantage for them otherwise not to have in litigation.⁶⁰

I. There are no incentives for mediators to perform well

In China, most mediators are retired persons who have a general knowledge of Chinese law. They mediate on a part time basis with only small allowances. Some mediators do not work anymore, while others could not develop their economic, social, and political status through their role as a mediator. The majority of mediators have signed a service contract with local governments of China to practice their performance as mediators. In other words, there are no incentives for mediators to perform well.⁶¹

4. Conclusion and Recommendations

Mediation is a non-binding method to resolve disputes between parties. In recent, it has achieved great success as a means of settling international commercial disputes between foreign and Chinese parties. For example, in an interview with the Global Arbitration Review, the secretary general of CIETAC, Yu Jianlong, said that 20 to 30 per cent of CIETAC's caseload is resolved by this method each year. Mediation is not only an efficient way for dispute resolution, but also a preparatory step prior to arbitration. The rationale of mediation is that parties may present their proposals to the mediator who will suggest a solution based on those proposals. Chinese people would consider that a voluntarily appointed mediator is the best person to reconcile a dispute between parties. Moreover, China has a long history in practicing mediation which emphasizes amicable dispute resolution and avoids conflicts. This conforms to the Confucian values that dominated whole community in pre-Communist China. They prefer to use mediation as a mean for peaceful and harmonious resolution of disputes rather than litigation.

Even though mediation has been criticized by disputants due to its limitations

and disadvantages, the practice of mediation can be considered as a major form of dispute resolution in China. The popularity of practicing mediation is mainly due to much cheaper cost than other methods. Also, mediation is informal and flexible in which the disputing parties could have discretion to reach a quick solution. Regarding mediation as a social service, many mediators may even waive the mediation fee or merely charge a nominal fee. Furthermore, parties are able to directly and actively participate in the communication and negotiation during mediation process, and choose and control the substantive norms for decision-making. Finally, mediation can reduce the tension and hostility between the disputing parties and create an amicable atmosphere during the whole dispute settlement process. The fundamental goal of mediation is a win-win settlement for both parties. The following are the recommendations for further developing mediation in China.

1. The quality of the mediation profession must be improved, particularly in rural areas, because there are fewer well-trained mediators.
2. Mediation should be a safeguard method to ensure that people are not coerced into settlement and that vulnerable parties are not discriminated in the process.
3. Mediation awareness program should be implemented. The awareness should include the information on the mode and process of mediation targeting the specific sector such as business and commerce.
4. Chinese universities should play a role in improving the awareness of mediation among students. Therefore, the universities should offer common core courses on mediation and dispute resolution within at least the first year undergraduate program. This could be done through an integrated interdisciplinary approach which assists to educate students about the process and skills of mediation.
5. Encouragement should be given for experienced mediators to assist newly accredited mediators to obtain practical mediation experience.
6. In order to achieve further development of mediation profession, mediators should be given incentives so as to continue their job voluntarily.

REFERENCES

1. M. Mian, & S. Hossain, *Problems of Alternative Dispute Resolution Mechanisms and Proposals for Improvement: A study in Bangladesh*, 5 INT'L J. SC. RESEARCH 54-9 (2014), available at <http://www.ijscr.com/article/v05i2014/I2V5%20%282%29.pdf> (last visited on Feb. 12, 2018).
2. N. GOULD, DISPUTE RESOLUTION IN THE CONSTRUCTION INDUSTRY: AN EVALUATION OF BRITISH PRACTICE: A DEPARTMENT OF THE ENVIRONMENT, TRANSPORT AND THE REGIONS PARTNERS IN TECHNOLOGY RESEARCH PROJECT 51-2 (1999).
3. K. PICKAVANCE, CONSTRUCTION LAW AND MANAGEMENT 445 (2013).
4. K. Chau, *Resolving construction disputes by mediation: Hong Kong experience*, 8 J. MGMT. IN ENGINEERING 384-93(1992).
5. R. Peerenboom & Xin He, *Dispute Resolution in China: Patterns, Causes and Prognosis*, 4 E. ASIA L. REV. 1 (2009).
6. J. HUANG & J. YANG, CHINA'S RAPID ECONOMIC GROWTH AND ITS IMPLICATIONS FOR AGRICULTURE AND FOOD SECURITY IN CHINA AND THE REST OF THE WORLD (2006), available at <http://www.fao.org/docrep/009/ag088e/AG088E03.htm> (last visited on Feb. 12, 2018).
7. Chau, *supra* note 4, at 384-93.
8. Guiguo Wang & Xiaoli He, *Mediation and International Investment: A Chinese Perspective*, 65 MAINE L. REV. (2012), available at <http://www.mainelawreview.com/wp-content/uploads/2013/01/14-Guiguo.pdf> (last visited on Feb. 12, 2018).
9. Yanming Wei, *New Development of ADR in China*, available at http://www.stf.jus.br/arquivo/cms/sobreStfCooperacaoInternacional/anexo/BRIC_intercambio/China__New_Development_of_ADR_in_China.pdf (last visited on Feb. 12, 2018).
10. H. FREEHILLS, A PRACTICAL GUIDE TO MEDIATION (2012), available at http://www.herbertsmithfreehills.com/-/media/Files/PDFs/2012/39127009_1%20Mediation.pdf (last visited on Feb. 12, 2018).
11. XUAN GU, THE COMBINATION OF ARBITRATION AND MEDIATION IN CHINA (2008), available at http://www.unige.ch/droit/mbl/upload/pdf/Gu_Xuan_s_paper.pdf (last visited on Feb. 12, 2018).
12. N. Gould, Recent Trends in Dispute Resolution (1998), available at https://www.fenwickelliott.com/sites/default/files/nick_gould_-_recent_trends_in_dispute_resolution_matrices_paper.indd_.pdf (last visited on Feb. 12, 2018).
13. S. Herbert, *Med-Arb – an Alternative Dispute Resolution practice*, 113 ARBITRATION NOTE, Feb. 28, 2012, available at <https://hsfnotes.com/arbitration/2012/02/28/med-arb-an-alternative-dispute-resolution-practice> (last visited on Feb. 12, 2018).
14. GU, *supra* note 11.
15. Y. SHAMIR, ALTERNATIVE DISPUTE RESOLUTION APPROACHES AND THEIR APPLICATION (2003), available at <http://unesdoc.unesco.org/images/0013/001332/133287e.pdf> (last visited on

- Feb. 12, 2018).
16. K. Frances, *China's highest court now promotes mediation*, NAT'L L. J., Nov. 22, 2010, available at https://files.skadden.com/sites/default/files/publications/Publications2293_0.pdf (last visited on Feb. 12, 2018).
 17. SHAMIR, *supra* note 15.
 18. E. Green, *International Commercial Dispute Resolution: Courts, Arbitration, and Mediation--Introduction*, 15 B.U. INT'L L. J. 175(1997).
 19. Chau, *supra* note 4, at 384-93.
 20. I. Zaleniene & A. Tvaronavičienė, *The Main Features and Development Trends of Mediation in Lithuania: the Opportunities for Lawyers*, 1 JURISPRUDENCIJA (2010).
 21. EUSME Center, *Guideline: Dispute settlement with Chinese companies (2012)*, available at http://ccilc.pt/wp-content/uploads/2017/07/RESOLUCAO_DE_LITIGIOS_COM_EMPRESAS_CHINESAS_EN_EUSMECENTER.pdf (last visited on Feb. 12, 2018).
 22. J. Xiao & X. Tang, *Cost and fee allocation in civil procedure (China)*, in COST AND FEE ALLOCATION IN CIVIL PROCEDURE: A COMPARATIVE STUDY (M. Riseman ed., 2010).
 23. GU, *supra* note 11.
 24. *Id.* at 10.
 25. D. Clarke, *Dispute resolution in China*, 5 J. CHINESE L. 245(1991).
 26. Gould, *supra* note 12.
 27. V. Lo, *Resolution of Civil Disputes in China*, 18 UCLA PAC. BASIN L. J. 117 (2000).
 28. B. Wolski, *An evaluation of the current rules of professional conduct governing legal representatives in mediation in Australia and the United States and of a range of proposed alternative 'non-adversarial' ethics systems for lawyers (Aug. 2011)* (Ph.D. dissertation, Bond University), available at <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1099&context=theses> (last visited on Feb. 12, 2018).
 29. P. McClellan, *Some benefits of mediation, Chinese national judges' College Kunming, China (2008)*, available at <http://www.supremecourt.justice.nsw.gov.au/agdbasev7wr/supremecourt/documents/pdf/mcclellan20408.pdf> (last visited on Feb. 12, 2018).
 30. J. CHEN, *CHINESE LAW: CONTEXT AND TRANSFORMATION* (2015).
 31. S. Lianbin, *International Sale of Goods: Combination of Arbitration and Mediation in China*, in INTERNATIONAL SALE OF GOODS: CHINA-EU LAW SERIES VOL. 5 (N. Nord & G. Cerqueira eds., 2017).
 32. E. Chan, *Amicable dispute resolution in the People's Republic of China and its implications for foreign-related construction disputes*, 15 CONSTRUCTION MGMT. & ECONOMICS 539-48 (1997).
 33. SHAMIR, *supra* note 14.
 34. B. Farooq, *The advantage of using commercial mediation over commercial litigation (2012)* (unpublished LL.M. dissertation, University of Bedfordshire) (on file with the author).
 35. Gould, *supra* note 12.

36. C. De Vera, *Arbitrating Harmony: Med-Arb and the Confluence of Culture and Rule of Law in the Resolution of International Commercial Disputes in China*, 18 COLUM. J. ASIAN L. 149 (2004).
37. SHAMIR, *supra* note 15.
38. Gu, *supra* note 11.
39. *Id.*
40. C. BÜHRING-UHLE, L. KIRCHHOFF & G. SCHERER, *ARBITRATION AND MEDIATION IN INTERNATIONAL BUSINESS* (2006).
41. SHAMIR, *supra* note 15.
42. Chau, *supra* note 4, at 384-93.
43. Gu, *supra* note 11.
44. McClellan, *supra* note 29.
45. P. Thorp & H. Sun, *Arbitration Guide: IBA Arbitration Committee CHINA* (2012), available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=93AE899D-A843-42D1-A4B1-EA475D32DE0C> (last visited on Feb. 12, 2018).
46. Gould, *supra* note 12.
47. Herbert, *supra* note 13.
48. *Id.*
49. P. Chan, *The Position of Mediation in Contemporary Chinese Civil Justice: A Proceduralist Perspective* (2016). (unpublished Ph.D. dissertation, Maastricht University) (on file with the author).
50. G. Kaufmann-Kohler & F. Kun, *Integrating mediation into arbitration: Why it works in China*, 25 J. INT'L ARB. 479 (2008).
51. Peerenboom & Xin, *supra* note 5.
52. G. Maher, *Alternative Dispute Resolution - Mediation, Early Neutral Evaluation ("ENE"), Expert Determination and Arbitration: Trends, Traps and Benefits*, MONTAQ, Aug. 1, 2012, available at <http://www.mondaq.com/australia/x/189486/Arbitration+Dispute+Resolution/Alternative+Dispute+Resolution+Mediation+Early+Neutral+Evaluation+ENE+Expert+Determination+and+Arbitration+Trends+Traps+and+Benefits> (last visited on Feb. 12, 2018).
53. De Vera, *supra* note 36.
54. W. He & Y. Zeng, *Extra-judicial Mediation System and Practice*, KING & WOOD CHINA BULL. 19-25 (2011).
55. Z. Rungao, *ADR in PR China* (2012), available at http://www.softic.or.jp/symposium/open_materials/11th/en/RZheng.pdf (last visited on Feb. 12, 2018).
56. M. Peter, *China, Commercial Dispute Resolution in China*, MONTAQ, Oct. 22, 2012, available at <http://www.mondaq.com/china/x/203180/Arbitration+Dispute+Resolution/Commercial+Dispute+Resolution+In+China> (last visited on Feb. 12, 2018).
57. C. Wall, *The Growth of International Mediation in Commercial Disputes, WHO'S WHO LEGAL* (Sept. 2011), available at <http://whoswholegal.com/news/features/article/29214/the-growth->

international-mediation-commercial-disputes (last visited on Feb. 12, 2018).

58. D. Cooper, *The "new advocacy" and the emergence of lawyer representatives in ADR*, 24 AUSTRALASIAN DISP. RES. J. 178-86 (2013).
59. Y. LI, THE JUDICIAL SYSTEM AND REFORM IN POST-MAO CHINA: STUMBLING TOWARDS JUSTICE (2016).
60. Herbert, *supra* note 13.
61. Lo, *supra* note 27.