

HARMONIZATION AND CROSS-BORDER MEDIATION: A CHINESE PERSPECTIVE

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As China's international trade in goods led the world in 2013 and remained number two if trade in services was included, its economic activeness will provide a fertile ground for cross-border disputes. The mediation rules and laws in mainland China, Hong Kong and Macao do not restrict their applicability to local cases. Nor do they contain any provision that would, in principle, be unsuitable for transnational cases.

On a practical level, an understanding of the Chinese preference, procedures and legal frameworks for mediation will help disputants make an informed decision on the choice of process rule if one of them has its place of business in China or the subject matter of the dispute is most closely connected with China.

From a theoretical point of view, the key question is whether harmonization of the mediation rules and laws in the mainland, Hong Kong and Macao could strengthen China's position as an attractive forum to foreign parties for international commercial mediation than maintaining the status quo.

This paper first explains the general preference for mediation in contemporary China and identifies the major practical challenges involved in international commercial mediation.

It then analyses the extent to which the mediation rules and laws in the mainland, Hong Kong and Macao address the pressing procedural issues differently or whether they generate largely similar results under different labels.

It concludes by arguing that the UNCITRAL Conciliation Rules 1980 and Model Law on International Commercial Conciliation 2002 made a significant contribution to the Chinese regulatory frameworks for international commercial mediation and that internal discrepancies should be harmonized in light of the unformulated policies of protecting integrity of process and achieving finality of disputes.