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MEDIATION IN COURT: A COMPARATIVE ANALYSIS OF THE REGULATION OF MEDIATORS' PARTICIPATION IN COURT PROCEEDINGS



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Mediation in Court: A Comparative Analysis of the Regulation of Mediators' Participation in Court Proceedings

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Abstract: Mediation is a modern dispute resolution mechanism that seeks a mutually acceptable solution by fostering dialogue between the parties, with the assistance of a neutral intermediary. International experience shows that mediation becomes more effective when it moves beyond mere declaration and is organically integrated into judicial practice. Effective mediation is a practical tool that reduces the burden on courts, saves time and costs and – most importantly – preserves relationships between the parties by addressing the root causes of their conflict.

This research paper analyses international experience in regulating mediators' participation in court proceedings. Based on an examination of practices in Germany, France, Italy, Singapore, the United States (Florida), England and Wales, Brazil, Kyrgyzstan, and Kazakhstan, the research identifies key common principles – voluntariness, confidentiality, and neutrality – as well as effective elements of mediation systems. These include detailed qualification and ethical standards, specialized training and a requirement of a high level of professionalism among mediators, procedural incentives – including economic incentives – for the parties; sanctions for unreasonable refusal to engage in mediation; measures to raise parties' awareness of the mediation procedure; and simplified mechanisms for enforcing mediated settlement agreements.

This research supports implementation of the action plan (road map) for achieving the key performance indicators of the national model for target business conditions through 2030 in the field of dispute resolution, and proposes specific recommendations for improving Russian legislation. These include introducing uniform standards for mediators' activities, establishing procedural incentives and sanctions for unreasonable refusal to engage in mediation, integrating mediation with the judicial system, and simplifying the enforcement of mediated settlement agreements.

Keywords: mediation in court, mediator status in court proceedings, standards of mediator conduct, mediation procedure, enforcement of mediated settlement agreements

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Introduction

This research paper was prepared to support the implementation of the action plan (road map) for achieving the key performance indicators of the national model for business conditions through 2030 in dispute resolution, approved by Order No. 3523-r of the Government of the Russian Federation of 29 November 2025.

The research examines mediation legislation and practice in several foreign jurisdictions (Germany, France, Italy, Singapore, the United States (with a focus on Florida), England and Wales, Brazil, Kyrgyzstan, and Kazakhstan), as well as at the supranational level (the European Union).

The research focuses on the legal status of mediators, including their rights, duties, safeguards, and liability. It also addresses related matters, including the procedural principles that shape the relationship between mediation, court proceedings, and other forms of alternative dispute resolution, as well as mechanisms for enforcing mediated settlement agreements, since all these areas are inextricably linked to the mediator's position and role.

Given their specific nature, matters relating to mediation involving public authorities fall outside the scope of this research and warrant separate study.

The research identifies best practices among the jurisdictions examined that could be used to improve Russian mediation legislation.

Summary

Common Features of All Jurisdictions Examined

1. Despite differences between legal systems and regulatory approaches, the analysis identified a number of fundamental principles and institutional characteristics common to all the jurisdictions examined.
2. In every jurisdiction, mediation is based on three principles: **voluntariness**, understood as the parties' freedom to enter and withdraw from the procedure; **confidentiality**, which generally prohibits all participants from disclosing information obtained during negotiations, subject to limited exceptions; and the mediator's **neutrality and impartiality** towards the parties. These principles are established either by legislation (Russia (**para. 23**), Germany (**para. 499**), France (**paras. 643–646**), Brazil (**para. 762**), Kyrgyzstan (**para. 137**), and Kazakhstan (**para. 190**)) or by professional codes and procedural rules (England and Wales (**para. 831**), Singapore (**para. 315**), and Florida (**para. 885**)).
3. In all the legal systems examined, the mediator – whether a private practitioner, a member of a public or private organization, or a judge acting as a mediator – is defined as an **independent and neutral intermediary without decision-making authority**. The mediator's task is to help the parties structure their communication and seek a mutually acceptable solution (Russia (**paras. 21, 74**); Germany (**paras. 495, 514**); Italy (**paras. 570, 579**); France (**paras. 645, 672**); the European Union (**paras. 411, 438**); Singapore (**paras. 312, 358**); Florida (**paras. 878-882, 904**); England and Wales (**paras. 830, 844**); Brazil (**paras. 761, 790**); Kyrgyzstan (**para. 134**); and Kazakhstan (**paras. 187-188, 227**)). In Germany, for example, a conciliation judge (*Güterichter*) performs the role of a mediator but has no authority to determine the merits of the case (**paras. 496, 550**). In Singapore, a separate settlement judge may be appointed to mediate the dispute and does not adjudicate its merits (**paras. 353, 358, 406**). In Kazakhstan and Kyrgyzstan, the model of an independent and neutral intermediary is organically embedded in historical traditions of reconciliation, in which the intermediary likewise had no public authority. As a result, confidence in mediation is built not only through formal legal regulation but also through cultural continuity (Kazakhstan (**paras. 189, 292-293**); Kyrgyzstan (**para. 134**)).
4. Many countries permit mediation **both before proceedings are commenced and after litigation has begun** (Russia (**paras. 88-89**); Germany (**paras. 520-521**); Italy (**paras. 587-588**); France (**paras. 691-692**); the European Union (**paras. 457-460**); Singapore (**paras. 372-373**); Florida (**paras. 911-912**); England and Wales (**paras. 849-850**); Brazil (**paras. 798-800**); Kyrgyzstan (**para. 159**); and Kazakhstan (**paras. 243-246**)). In some countries, legislation also requires **recourse to a mediator as a precondition for subsequent judicial protection** (France (**para. 643**), Germany (**para. 526**), Singapore (**para. 386**), and Italy (**para. 557**)). Courts generally have the power to invite the parties to use mediation and, in some jurisdictions, an unreasonable refusal to participate in mediation or attend an information session may have adverse procedural consequences (England and Wales (**paras. 851, 868**); Singapore (**para. 397**); Brazil (**para. 818**); Italy (**paras. 610-616**); France (**para. 693**); and Kazakhstan (**paras. 284-286**)).
5. At the same time, neither Russian legislation nor the recommendations of the Supreme Court of the Russian Federation **contain provisions governing interaction between courts and the mediation community**, including offering mediation or an information session to the parties. At present, this depends entirely on the approach taken by the management of each individual court (**paras. 57, 124**). Attitudes towards mediation are therefore uneven, and the level of awareness among judges and litigants varies considerably between regions

(para. 59). The procedure for court-annexed mediation and its possible consequences are not regulated by procedural legislation, nor is court-annexed mediation identified as a separate form of mediation in the Federal Mediation Law (para. 53).

6. A common feature is the **regulation of mediator liability**. Many countries recognize the **mediator's immunity from civil liability** for the outcome of the procedure: the mediator is responsible for the process, not for the parties' decision. A mediator may nevertheless be held liable for intentional harm or gross negligence under general tort rules (Florida (para. 907), Singapore (para. 360), the European Union (para. 446), and Kazakhstan (para. 234)). **Disciplinary liability** for breaches of ethical standards and mediation principles, including confidentiality and impartiality, is provided for in Florida, where certification may be revoked (paras. 906, 908-909); Kazakhstan, where measures under the Code of Ethics of the Association of Mediators may include expulsion from the organization (para. 235); Kyrgyzstan, where the Ethics Commission of the Chamber of Mediators may suspend a mediator's status for up to six months (paras. 147, 155); Singapore, under the rules of the Singapore International Mediation Institute (para. 359); France, where a mediator may be removed from the register (paras. 667-668, 677); and Italy, where a mediation organization may be removed from the Ministry of Justice register (para. 582). At the European Union level, the European Code of Conduct for Mediators establishes general ethical requirements, while the form of liability is determined by the national law of each Member State (para. 445).

Distinctive Features

7. The analysis of foreign experience revealed several material differences from the Russian regulatory model, both in formal legal terms and in practice.
8. **Level of detail in regulating mediator requirements.** In Russia, federal legislation establishes only a framework. The requirements applicable to mediators are general and minimal (paras. 62-70), while ethics and specialization are not regulated by legislation (paras. 73, 79). Foreign jurisdictions generally provide much more detailed regulation:
 - Florida has a comprehensive set of Florida Rules for Certified & Court-Appointed Mediators, which set out qualification requirements, ethical standards, and disciplinary procedures in detail (paras. 878-940).
 - In Italy, requirements for public and private mediation organizations and for mediators themselves are set out in detail in secondary legislation, including a decree of the Ministry of Justice (paras. 571-574, 577).
 - Kazakhstan has a two-tier model that clearly distinguishes professional and community mediators, requires membership of self-regulatory organizations, and provides detailed ethical regulation (paras. 211-214, 231).
 - The new Kyrgyz mediation law adopted in 2025 establishes a single self-regulatory Chamber of Mediators with mandatory membership (paras. 145, 147).
 - Germany's Mediation Act establishes only general requirements, while more detailed requirements for certified mediator training programmes, including at least 130 hours of training, are prescribed by secondary legislation issued by the Ministry of Justice (paras. 510-511).
 - At the European Union level, the Mediation Directive establishes framework principles and leaves the details to the Member States. This has produced a range of national

approaches while preserving common standards of confidentiality, voluntariness, and mediator competence (**paras. 429-432**).

9. **Mediator specialization.** Russian legislation does not provide for mediator specialization (**para. 73**). In other jurisdictions, specialization is a central feature of the system:
 - Florida provides separate certifications for county court, family, appellate, and dependency mediators (**paras. 883, 903**).
 - In France, specialization and a state diploma are prescribed by legislation only for family mediators (**paras. 665, 671**).
 - In Singapore, specialization is supported by the Singapore International Mediation Institute (SIMI) and specialist centres, including those dealing with employment and neighbour disputes. Mediators are divided into several levels, from Level 1 to SIMI Certified Mediator (**paras. 344, 357**).
 - In Kazakhstan and Kyrgyzstan, specialization is supported through professional training, including specialist courses, and through the mandatory recording of each mediator's field of competence in public registers (Kazakhstan (**paras. 224-226**); Kyrgyzstan (**paras. 150-151**)).
 - At the European Union level, functional specialization is supported by different instruments for different categories of disputes, including the ADR Directive for consumer disputes and recommendations on family mediation. This provides a basis for differentiated mediator requirements (**paras. 433-437**).
10. **Incentives and sanctions.** Apart from the general rule providing for a partial refund of the court fee when a mediated settlement is approved by the court as a judicial settlement, Russian legislation contains no other incentives for parties to use mediation (**para. 122**). Nor does it impose liability for an unreasonable refusal to participate, leaving parties with no incentive even to attend an information session (**paras. 58, 121**). Mediation costs are also not recoverable as litigation costs, and the number of mediations remains extremely low (**paras. 42-45**). By contrast, foreign jurisdictions provide a range of incentives and sanctions depending on the category of dispute:
 - In England and Wales, cost sanctions may be imposed in civil and commercial disputes where a party unreasonably refuses to use alternative dispute resolution, applying the criteria developed in *Halsey* (**para. 868**).
 - In Italy, financial and procedural sanctions apply in disputes in which mediation is a precondition for continuing the proceedings, whether through mandatory pre-action mediation or a court-ordered meeting with a mediator (**paras. 610-616**). Tax credits of up to EUR 600 per party are also available (**paras. 617-620**).
 - In Singapore, sanctions, including refusal to award costs or an order requiring the successful party to bear costs, may be imposed in civil claims where the parties are required to attempt mediation (**para. 397**).
 - In Brazil, a party that fails without good cause to attend an out-of-court mediation session may be ordered to pay 50% of the litigation costs. The sanction applies in any dispute in which an invitation to mediate has been issued (**para. 818**).
 - In France, a judicial fine of up to EUR 10,000 may be imposed for an unjustified failure to attend an information session with a mediator, but not for refusing mediation itself (**paras. 693, 732**).

- In Kazakhstan, the claimant receives a full refund of the court fee when the court approves a mediated settlement (**para. 285**). A party that fails without good cause to attend out-of-court mediation may also be required, if it is unsuccessful in the litigation, to reimburse 50% of the successful party's litigation costs (**paras. 284-286**).
 - Kyrgyz legislation permits deferral of one half of the court fee where a party indicates an intention to seek an amicable settlement, and a mandatory information session with a mediator will be introduced in 2027 (**para. 179**).
 - The European Commission for the Efficiency of Justice (CEPEJ) guidelines on civil mediation allow part of the litigation costs to be imposed on a party that unreasonably refused mediation, even where that party ultimately succeeded. This provides guidance for national legislation (**para. 488**).
11. **Enforcement of mediated settlement agreements.** In Russia, an agreement may be formalized in three ways: as a civil-law transaction, as a judicially approved settlement, or as a notarized agreement having the force of an enforceable title (**paras. 110-111, 114**). Legal scholarship notes that the legal nature of such agreements has not been sufficiently clarified (**para. 37**). Foreign jurisdictions use a variety of mechanisms:
- In Italy, an agreement concerning the principal types of obligations, signed by the parties and their lawyers in the mediator's presence, automatically constitutes an enforceable title. Alternatively, the president of the court may declare the agreement enforceable by order (**para. 608**).
 - In France, the court registry may make an agreement signed by both the parties and their lawyers enforceable by applying a special endorsement (**para. 729**). The agreement may also be approved by the court through *homologation* (**paras. 722-726**).
 - In Singapore, court approval – regarded as the “gold standard” – converts the agreement into a consent order enforceable in the same manner as a judgment (**paras. 387, 393**).
 - Germany frequently uses a court record, notarization, or a settlement instrument prepared by lawyers and submitted to the court (**para. 539**).
 - In Kazakhstan, an out-of-court agreement is a transaction, while a court-approved agreement is a judicial act, creating a predictable enforcement mechanism (**paras. 276-277**).
 - Kyrgyzstan offers a broad range of options, from treating the agreement as a civil-law transaction to having it approved by the court as a court-approved settlement, with mandatory notarization possible for transactions involving immovable property (**paras. 172-177**).
 - Article 6 of the European Union Mediation Directive establishes the principle that an agreement resulting from mediation must be capable of being made enforceable, while leaving the specific mechanism to each Member State (**para. 485**).

Assessment of the Effectiveness of Approaches to Regulating Mediator Status

12. The most developed and effective models appear to be those with detailed regulation at the national, state, or regional level. Florida, with detailed certification and ethics rules, strict specialization, and a pre-trial settlement rate exceeding 90% (**paras. 884, 890**); Singapore, with integration into the court system, the possibility of compulsory referral to mediation, SIMI accreditation, and success rates of 85–90% in the State Courts (**para. 332**); Kazakhstan,

with a two-tier system combining State regulation and self-regulation, financial incentives, and substantial growth in use, including 63,926 civil cases in 2023 (**para. 205**); and Italy, with strict requirements for mediation organizations and a developed incentive system that includes tax credits (**paras. 617-620**), demonstrate that clearly defined legal frameworks provide a foundation for a high-quality and predictable procedure. Kyrgyzstan's focus on establishing a single Chamber of Mediators and regulating online mediation in detail is a noteworthy model for centrally restructuring the institution under indirect State supervision, while taking account of modern requirements (**paras. 145, 180**). The European Union's approach is also valuable: it provides guidance without prescribing rigid, uniform regulatory models (**paras. 411-494**), allowing national mediation systems to be developed with reference to supranational standards while enabling each jurisdiction to select the instruments and mechanisms best suited to its own cultural and institutional characteristics.

13. High effectiveness is achieved where formal rules are supported by **institutional infrastructure and practical incentives**. Court-based mediation centres, such as the 1,930 CEJUSCs established in Brazil (**para. 774**); registers of certified mediators indicating their specialization, as in France (**para. 667**) and Italy (**paras. 571-574**); and active judicial case management, including sanctions for refusing alternative dispute resolution, as in England and Wales (**paras. 851, 868**) and Singapore (**para. 397**), turn mediation from a merely declared option into an effective instrument. By contrast, a framework approach such as Russia's leaves regulatory gaps, as demonstrated by the exceptionally low use of mediation: 0.007% of cases considered in 2015, according to the Supreme Court of the Russian Federation, and approximately 0.005% in 2019–2021 (**para. 43**).

Recommendations for Improving Mediator Status in Russia and Amending Russian Legislation

14. As a civil-law jurisdiction, Russia could successfully adapt elements from other jurisdictions in the same legal family, including Germany, Italy, France, and Brazil, as well as proven elements from common-law systems, including England and Wales, Singapore, and Florida, while also drawing on the recent experience of neighbouring post-Soviet States, including Kyrgyzstan and Kazakhstan:
 - Developing detailed qualification and ethical standards, following the examples of Florida (**paras. 878-940**), Italy (**paras. 571-574**), Kazakhstan (**paras. 211-214**), and Singapore (**paras. 372-380**), would address the fragmented nature of Russian regulation and establish uniform requirements for mediators.
 - Introducing mandatory specialization, following the examples of Florida (**paras. 883, 903**), Kazakhstan (**paras. 224-226**), and Kyrgyzstan (**paras. 150-151**), would help ensure the quality of mediation for different categories of disputes.
 - Introducing procedural incentives and sanctions, following the examples of England and Wales (**para. 868**), Italy (**paras. 610-616**), Singapore (**para. 397**), and Brazil (**para. 818**) – including taking a refusal to mediate into account when allocating litigation costs – would give parties a practical incentive to use conciliation procedures.
 - Introducing a mandatory information session with a mediator, following the examples of Italy (**paras. 587-596**), France (**para. 693**), and Kyrgyzstan (**para. 179**), would help address parties' lack of awareness of the benefits of mediation.
 - Establishing a single national or regional register of mediators, following the examples of Italy (**paras. 571-574**), Kazakhstan (**para. 210**), and France (**para. 667**), together with disciplinary mechanisms modelled on those of Florida (**paras. 906, 908-909**),

Kazakhstan (**para. 235**), and Kyrgyzstan (**para. 155**), would improve transparency and quality control.

- Simplifying the procedure for making an agreement enforceable, following the examples of Italy (**para. 608**), France (**para. 729**), and Singapore (**paras. 387, 393**), would reduce transaction costs and increase confidence in mediation.

Adapted to the Russian legal context, these measures could transform mediation from a formally available option into an effective means of reducing court caseloads and resolving disputes in a responsible and orderly manner, as the cost of access to justice rises.

15. The research demonstrates a clear need for Russian legislation to define **mediator status in greater detail and introduce specialization**, in particular by:
 - developing and approving qualification and ethical standards for mediators at federal or secondary-legislation level, following the examples of Florida (**paras. 878-940**), Italy (**paras. 571-574**), and Kazakhstan (**paras. 211-214**); and
 - requiring mediators to specialize in particular categories of disputes, including family, commercial, employment, and criminal matters, and establishing corresponding continuing professional education requirements, following the examples of Kazakhstan (**paras. 224-226**), Kyrgyzstan (**paras. 150-151**), and Florida (**paras. 883, 903**).
16. The research also supports **closer integration of mediation into the court system and the creation of incentives for its use**:
 - Amendments to procedural legislation could permit courts, when allocating litigation costs, to take into account a party's unreasonable refusal to mediate, following the examples of England and Wales (**para. 868**), Singapore (**para. 397**), and Brazil (**para. 818**), and the recommendations of the European Union (**para. 488**), while establishing clear criteria for determining when a refusal is unreasonable.
 - Treating pre-action mediation costs as recoverable litigation costs, payable by the unsuccessful party, also warrants consideration.
 - Introducing a mandatory information session with a mediator for specified categories of disputes could be particularly valuable, following the examples of Italy (**paras. 587-596**), France (**para. 693**), and Kyrgyzstan (**para. 179**).
 - Legislation should require courts to explain the benefits of mediation and offer it to the parties, and should empower courts to stay proceedings for mediation, with the possibility of extending the relevant period, following the examples of Germany (**paras. 523-526**), Kazakhstan (**paras. 247-250**), and Singapore (**para. 399**).
 - A system of incentives for courts to develop court-annexed mediation should also be considered. Such measures could include improving statistical reporting and incorporating the number of court-approved settlements reached, and cases terminated following mediation, into judicial performance indicators, following the Italian example (**para. 568**).
17. Improving **liability and oversight mechanisms**, drawing on the approaches used in other jurisdictions, could also materially strengthen mediator status and mediation as an institution:

- An openly accessible federal, regional, or circuit register of professional mediators could record each mediator’s specialization, experience, and disciplinary history, following the examples of Italy (**paras. 571-574**), Kazakhstan (**para. 210**), and France (**para. 667**).
 - Organizations that train mediators should be subject to stronger oversight and uniform training standards, following the examples of Florida (**paras. 878-940**), Italy (**paras. 571-574**), and Kazakhstan (**para. 224**).
 - Legislation should provide for disciplinary liability, including removal from the register, for serious breaches of mediation principles, and should designate a body authorized to hear such matters or apply to a court, following the examples of Florida (**paras. 906, 908-909**), Kazakhstan (**para. 235**), and Kyrgyzstan (**para. 155**).
18. **Clarifying the status of mediated settlement agreements** could also make mediation more attractive as a means of achieving durable and effective dispute resolution. In all the jurisdictions examined, a mediated settlement agreement is treated as a transaction, and non-performance gives rise to ordinary civil-law consequences, including the possibility of bringing a claim. The procedure could nevertheless be refined to permit enforcement without separate court proceedings.
 19. For a number of jurisdictions, the clearest solution would be to **simplify the procedure for giving a mediated settlement agreement the force of an enforceable title and to authorize lawyers participating in the mediation to certify such agreements**, as in Italy (**para. 608**) and France (**para. 729**). The involvement of professional representatives makes mediation more flexible and less costly than notarization while preserving three levels of review of the agreement’s legality: the mediation profession, the legal profession, and the courts. Because professional representation is not mandatory in every case, measures should also be taken to make notarization of mediated settlement agreements more attractive, with the cost not exceeding the court fee payable for litigation.
 20. Particular consideration should be given to **simplified judicial procedures for making a mediated settlement agreement enforceable**. The order-for-payment procedures under the Civil Procedure Code and the Arbitrazh Procedure Code of the Russian Federation could serve as a model, allowing a court, on a joint application by all parties, to approve a mediated settlement agreement without summoning them, provided that the agreement does not contravene the law or infringe third-party rights.

I. Russian Federation

1. Principal Legislation and Other Instruments. Terms and Abbreviations

- Federal Mediation Law — Federal Law No. 193-FZ of 27 July 2010 on an Alternative Dispute Resolution Procedure with the Assistance of a Mediator (Mediation Procedure);
- RF APC — Arbitrazh Procedure Code of the Russian Federation;
- RF CrPC — Criminal Procedure Code of the Russian Federation;
- RF CPC — Civil Procedure Code of the Russian Federation;
- RF CAJP — Code of Administrative Judicial Procedure of the Russian Federation;
- RF CC — Civil Code of the Russian Federation;
- SAC Plenum Resolution No. 50 — Resolution No. 50 of the Plenum of the Supreme Arbitrazh Court of the Russian Federation of 18 July 2014 on Reconciliation of the Parties in Arbitrazh Proceedings;
- MSP — mediation service provider;
- RF Supreme Court — Supreme Court of the Russian Federation.

2. Concept and Principles of Mediation

(a) Understanding of Mediation in the Jurisdiction Examined

21. Mediation is a dispute resolution process in which a mediator assists the parties, on the basis of their voluntary consent, in reaching a mutually acceptable solution (article 2(2) of the Federal Mediation Law).
22. The law does not expressly distinguish between court-connected and out-of-court mediation. Article 16(3) of the Federal Mediation Law nevertheless requires that only a professional mediator may participate in “court-annexed” mediation, in accordance with article 16(1).

(b) Are the Principles of Voluntariness, Confidentiality, and Neutrality Established by Law?

23. Article 3 of the Federal Mediation Law provides that mediation is conducted on the basis of the parties’ mutual consent and the principles of voluntariness, confidentiality, cooperation, equality of the parties, and the mediator’s impartiality and independence.
24. The principle of neutrality is implemented through the following related principles:
 - equality of the parties;
 - the mediator’s impartiality; and
 - the mediator’s independence.
25. Equality of the parties means not only legal equality under procedural legislation, including article 6 of the RF CPC and article 7 of the RF APC, but also organizational equality ensured by the mediator, such as an equal number of meetings and equal time devoted to each party.

26. In practice, the mediator's impartiality also concerns the mediator's personal and psychological perception of the parties to the dispute, as indirectly reflected in article 11(7) of the Federal Mediation Law.
27. Under article 9(3) of the Federal Mediation Law, a mediator may independently decide to withdraw from the procedure if circumstances arise that affect the mediator's impartiality or independence.

(c) What Are the Limits of Confidentiality? May the Negotiations Be Referred to in Court?

28. Under article 5(2) of the Federal Mediation Law, a mediator may not disclose information relating to the mediation procedure that becomes known to the mediator in the course of the procedure without the parties' consent.
29. Unless the parties agree otherwise, the mediator, the MSP, and other persons present during the procedure may not refer to information concerning:
 - an offer or a party's willingness to participate in the procedure;
 - views and proposals expressed during the procedure;
 - admissions made by a party during the procedure; or
 - a party's willingness to accept a proposal for settlement of the dispute (article 5(3) of the Federal Mediation Law).
30. Such information may not be demanded from the mediator or the MSP, except where provided by law or agreed by the parties (article 5(4) of the Federal Mediation Law).
31. These provisions make clear that a mediator may not inform the court of the status of the procedure, even in response to a court request.
32. It remains unclear, however, whether the parties may refer to the fact that negotiations took place, particularly where they have concluded an agreement to mediate.
33. The law is uncertain as to when the duty of confidentiality begins to apply to the parties and the mediator. According to established mediation practice, the mediator's duty of confidentiality applies from the moment an invitation to participate in mediation is sent to a party.
34. In practice, there is debate as to when the parties become bound by confidentiality:
 - when they become "parties" within the meaning of article 2(1) of the Federal Mediation Law, that is, persons wishing to resolve a dispute through mediation, following acceptance of the mediator's invitation; or
 - when the agreement to mediate is concluded and confidentiality is first recorded "on paper". Under the general principles of civil law and the current regulatory framework, this is the point at which the parties' rights and obligations in relation to the mediation procedure arise.

(d) Is Legality a Required Principle for a Mediated Settlement Agreement?

35. Russian legislation does not currently contain an express requirement that the principle of legality be observed during mediation.
36. The legality of a mediated settlement agreement is reviewed by:

- the court, where the agreement is submitted for approval as a court-approved settlement (article 153.10(6) of the RF CPC, article 141(6) of the RF APC, and article 137.1(6) of the RF CAJP); and
 - a notary, when notarizing the mediated settlement agreement. Although the legislation contains no express rule, the requirement appears in the Guidelines on the Notarization of Mediated Settlement Agreements approved by the Board of the Moscow City Notarial Chamber on 25 June 2024.
37. The absence of a legality principle governing mediators, particularly court-annexed mediators, has repeatedly been criticized in Russian academic commentary.¹ In practice, it undermines confidence in mediation: parties may be reluctant to spend time and money on a procedure that could produce an “unlawful” agreement that neither a court nor a notary will approve. In disputes already before a court, this is one of the critical factors affecting whether mediation takes place.

3. Scope of Mediation and Its Relationship with the Courts

(a) What Types of Disputes Are Covered, Including Civil, Commercial, Employment, and Administrative Disputes?

38. A mediator may participate in all types of disputes, including disputes arising from civil, administrative, and other public-law relationships, family and employment disputes, and disputes connected with business and other economic activities (article 1(2) of the Federal Mediation Law). Mediation may also be used for other disputes where expressly provided by law (article 1(3) of the Federal Mediation Law). Criminal mediation is possible, for example, in privately prosecuted cases (article 20(2) of the RF CrPC). In substance, mediation may be used in any dispute or judicial proceedings unless expressly prohibited by legislation.

(b) Are There Any Exclusions from the Scope, Such as Disputes Affecting the Public Interest?

39. The law expressly prohibits mediation in:
- collective employment disputes (article 1(5) of the Federal Mediation Law);
 - disputes affecting the public interest, including criminal cases subject to mixed private-public or public prosecution (article 20(3) of the RF CrPC); and
 - other disputes affecting the rights and obligations of third parties who do not participate in the mediation (article 1(5) of the Federal Mediation Law).
40. Mediation involving a person who is not a party to the proceedings is possible, subject to certain qualifications. The parties may either apply to the court to join that person to the proceedings or conclude a mediated settlement agreement with that person as a civil-law contract. A court-approved settlement, however, may set out only the rights and obligations of the parties to the court proceedings.

¹ See, for example, Allakhverdova, O. V., Bannikov, R. Yu., Velichkova, O. I., et al. (2012). The development of mediation in Russia: Theory, practice, and education (E. I. Nosyreva & D. G. Filchenko, Eds.); Zaitsev, A. I. (2012). Mandatory mediation: Arguments for and against. *Civil Procedure Review*, 6, p. 57–65; Voronetskii, P. M. (2016). Some reasons for the unpopularity of mediation in the Russian Federation. *Russian Justice*, 3, p. 62–65; et al.

41. Established case law confirms that a court may approve a settlement on the basis of a mediated settlement agreement.²

4. The Role of Case Law and the Attitude of the Judiciary

(a) What Are the General Statistics on the Use of Mediation in Court Cases?

42. According to the Judicial Department at the RF Supreme Court, no separate statistics are maintained on court-approved settlements reached following mediation.³
43. According to publicly available sources and legal databases, the most recent RF Supreme Court document addressing the use of mediation in court disputes is the Review of Judicial Practice under Federal Law No. 193-FZ of 27 July 2010 on an Alternative Dispute Resolution Procedure with the Assistance of a Mediator (Mediation Procedure) for 2015, approved by the Presidium of the RF Supreme Court on 22 June 2016. Paragraph 1 of the Review states that, in 2015, courts of general jurisdiction considered 15,819,942 civil cases and cases arising from public-law relationships. Mediation was used to settle 1,115 cases, representing 0.007% of the total.
44. No more recent official statistics are currently available. Some studies, however, indicate that, between 2013 and 2021, the proportion of cases in courts of general jurisdiction that ended in a court-approved settlement following mediation ranged from 0.003% to 0.009%.⁴
45. During the same period, the arbitrazh courts considered 1,531,473 cases, 44 of which involved a mediator. A court-approved settlement was approved in seven cases; in the other 37, the claim was either withdrawn or admitted by the respondent.
46. Official statistics are available on the number of cases terminated by a court-approved settlement.
47. At present, however, it is not possible to maintain statistics on the number of cases in which the parties consulted a mediator, for the following reasons:
- confidentiality: unless the parties inform the court, it will not know that a mediator was involved; and
 - parties do not always apply for a mediated settlement agreement to be approved as a court-approved settlement because they do not wish sensitive information to appear in a judicial act. It is therefore common for the mediated settlement agreement to take the form of a civil-law contract, while the claim is withdrawn in the court proceedings.
48. Allowing a mediator to disclose to the court the fact that a mediation procedure took place would generally make it easier to track the development of this mechanism.

(b) Are There Any Authoritative Higher-Court Guidelines, Leading Cases, or Similar Sources on Mediation?

49. There are currently no authoritative guidelines or leading judicial precedents on mediation.

² See, for example, Arbitrazh Court of the Far Eastern Circuit, Resolution of 7 March 2025 in Case No. A04-1447/2022; Presidium of the Intellectual Property Court, Order of 13 October 2025 in Case No. SIP-1405/2024; Intellectual Property Court, Order of 17 May 2023 in Case No. SIP-1069/2022; et al.

³ *Judicial statistics: Judicial statistics data*. (n.d.). Judicial Department at the Supreme Court of the Russian Federation. [URL](#)

⁴ Kudrina, A. A. (2023). Application of the mediation procedure in the Russian Federation. *Young Scientist*, (19), p. 359–361. [URL](#)

50. When approving mediated settlement agreements as court-approved settlements, arbitrazh courts apply SAC Plenum Resolution No. 50.
51. Courts of general jurisdiction have no equivalent authoritative guidance on court-approved settlements, including mediation-related issues.
52. The RF Supreme Court has issued separate guidance on pre-action dispute resolution, including the Review of Arbitrazh Court Practice Applying Procedural Legislation on Mandatory Pre-Action Dispute Resolution, approved by the Presidium of the RF Supreme Court on 22 July 2020, and Resolution No. 18 of the Plenum of the RF Supreme Court of 22 June 2021 on Certain Issues of Pre-Action Dispute Resolution in Civil and Arbitrazh Proceedings. These instruments also address conciliation procedures, including mediation.
53. The absence of foundational higher-court instruments on mediation appears to be attributable largely to the following factors:
- limited use of mediation. Even in courts that offer mediation relatively actively, the proportion of cases involving a mediator is extremely small. Existing incentive mechanisms give courts no procedural interest in actively referring parties to an intermediary. This reflects both judges' limited awareness of mediation and the vague procedural requirements governing it. Under the RF APC and the RF CPC, mediation is currently only one of several methods of amicable dispute resolution, without detailed rules or dedicated regulation. The Federal Mediation Law does not even identify court-annexed mediation as a distinct procedure, apart from prescribing time limits. It is therefore impossible to speak of any established practice across the court system as a whole; and
 - the confidential and dispositive nature of the procedure. The Federal Mediation Law is entirely framework-based, while procedural legislation is intended to ensure comprehensive judicial support for amicable dispute resolution. Courts do not intervene in negotiations, and mediation is subject to strict confidentiality requirements that prevent participants from informing the court.
54. Certain judicial decisions define the limits of the parties' rights when concluding court-approved settlements, but they apply to mediation only indirectly.

(c) What Is the Judiciary's Attitude towards Mediation? What Concerns or Difficulties Do Judges Identify?

55. Judicial attitudes towards mediation depend entirely on the approach of the management of the particular court.
56. The principal concerns and difficulties identified by courts are:
- the absence of a legality principle in the procedure, at least in court-annexed mediation;
 - the absence of mediator and MSP specialization;
 - the desirability of requiring court-annexed mediators to have a legal education; and
 - the difficulty professional representatives experience in entering negotiations.
57. Where court management creates organizational conditions for mediation – for example, by designating a conciliation and mediation room, providing information boards, publishing details of duty mediators and accredited MSPs on those boards and court websites, and appointing a court staff member responsible for mediation – judges tend to view mediation

positively. They are highly familiar with the procedure and, in some cases, use mediation techniques themselves to direct the parties towards negotiations.

58. In court-annexed mediation, particularly in arbitrazh proceedings, distrust of the procedure among professional representatives is a serious obstacle. Even when a court asks representatives to inform their clients that a particular dispute may be settled, the court has no express statutory power to verify whether they have done so. Its only option is to state in a judicial act that the client must explain whether participation in a conciliation procedure – not necessarily mediation – is possible. Because of their limited awareness, representatives and parties also have no procedural incentive to participate. The law imposes no liability for refusing mediation; the only incentive is the general rule providing for a partial refund of the court fee when the court approves a mediated settlement agreement (see **para. 122 below**).

(d) How Active Is the Mediation Community in Cooperating with the Courts?

59. In the absence of a unified State policy, the activity of the mediation community depends largely on subjective factors: the attitude of court management towards mediation, the presence of experienced and respected mediators in the region, and the availability of reputable MSPs.
60. Mediation appears to be more developed in the Moscow, North-Western, and Ural circuits because of economic and historical factors, and the mediation community is more active in those regions.
61. Awareness of mediation among the legal and business communities is relatively high in those circuits, producing greater confidence in the procedure. Because professional markets there are dense and highly competitive, market participants are also more receptive to mediation as an expedited form of dispute resolution than to litigation, which may last for years through multiple levels of court review.

5. Legal Status, Role, and Duties of the Mediator in Court Proceedings

(a) General Requirements for Mediators, Including Citizenship, Membership in a Specialist Organization, Professional or Non-Professional Practice, Exclusivity of Practice, Experience, Education, Further Training, Internships, Professional Reputation, and Status-Maintenance Fees

62. Under article 15 of the Federal Mediation Law, mediators may practise on either a professional or a non-professional basis.
63. A person may act as a mediator on a non-professional basis under article 16 of the Federal Mediation Law, without any citizenship restriction, if that person:
- is at least 18 years old;
 - has full legal capacity; and
 - has no criminal record.
64. A person may act as a professional mediator if that person:
- is at least 25 years old;
 - has a higher education qualification;
 - has completed further education in the application of mediation; or

- is a retired judge.
65. Membership of an MSP is not mandatory for a professional mediator. Nor does the law impose any mandatory fees, although an MSP may establish them in its internal rules. Failure to pay such a fee does not result in loss of mediator status.
 66. Although the law does not expressly say so, articles 15 and 16 of the Federal Mediation Law appear to operate as general and special provisions. A professional mediator, for example, should likewise have no criminal record.
 67. Article 15(5) of the Federal Mediation Law prohibits federal, regional, and municipal civil servants from acting as mediators unless otherwise provided by law.
 68. Article 15(6) also establishes the following general ethical requirements for mediators:
 - not to represent either party;
 - not to provide legal, advisory, or other assistance to either party;
 - not to act as mediator where the mediator has a personal interest in the outcome of the dispute; and
 - not to make public statements without the parties' consent.

(b) Must a Mediator Have a Higher Legal Education Qualification, Generally or When Participating in Court Proceedings?

69. To practise professionally, a mediator must have a higher education qualification in any field, not necessarily law, and further professional education in the application of mediation (article 16(1) of the Federal Mediation Law).
70. No educational qualification is required to act as a mediator on a non-professional basis (article 15 of the Federal Mediation Law).
71. For court-annexed mediation, the only requirement is that the person assisting the parties' reconciliation in court proceedings must be a professional mediator (article 16(3) of the Federal Mediation Law). No additional requirements apply.
72. The court may not influence the parties' agreement on the choice of mediator.

(c) Do Mediators Specialize by Category of Case, and How Is Such Specialization Regulated?

73. Russian legislation does not require mediator specialization.

(d) What Is the Mediator's Procedural Role: Court Assistant, Independent Neutral Intermediary, or Representative of the Procedure?

74. Under the RF APC, RF CPC and RF CAJP, a mediator has no procedural role. Moreover, viewed as a whole in the light of the Federal Mediation Law, the legislation currently precludes any procedural role, because such a role would conflict with confidentiality.

(e) Are the Mediator's Rights and Duties Established by Procedural Legislation? If So, Which Rights and Duties, and at What Level: Self-Regulation, National Law, State or Canton Law, or a State Accreditation and Listing System?

75. Because a mediator has no procedural status, procedural rights and duties are likewise not established (see above).

(f) For What May a Mediator Be Held Liable, Including Liability in Dealings with the Court, Liability towards Participants in the Procedure, and Liability for Adverse Consequences Caused to the Parties?

76. Article 17 of the Federal Mediation Law provides that a mediator is civilly liable for harm caused to the parties in connection with the mediation procedure, on the grounds set out in:
- article 15 of the RF CC on compensation for losses; and
 - article 151 of the RF CC on compensation for non-pecuniary damage.
77. Chapter 59 of the RF CC governs obligations to compensate for harm. There is currently no relevant case law.
78. Article 18 of the Federal Mediation Law permits self-regulatory organizations, including MSPs, to develop standards and rules and to monitor compliance by mediators who are members. Liability may therefore also be prescribed by internal rules.
79. The statutory provisions on mediator liability are extremely vague. The absence of a single professional body, such as a national chamber of mediators, also makes it impossible to track instances in which mediators have been held liable for breaches of ethical requirements, mediation principles, and similar obligations.
80. Following a 2019 amendment to the Federal Mediation Law that permitted notaries to certify mediated settlement agreements and gave such agreements the force of enforceable titles, the Federal Financial Monitoring Service (Rosfinmonitoring) issued a notice dated 23 July 2021 calling on mediators to exercise greater vigilance in relation to sham transactions. The notice warned that legal consequences could arise for all participants in an unlawful transaction, including the mediator. Under the Federal Mediation Law, however, the mediator is not a party to the mediated settlement agreement, and the law does not require the mediator to sign it.

(g) May a Mediator Voluntarily or Compulsorily Terminate an Accepted Appointment? What Consequences May Follow for the Participants, the Court, and the Mediator?

81. A mediator may voluntarily terminate mediation under article 14(3) of the Federal Mediation Law: after consulting the parties, the mediator may send them a written statement terminating the procedure on the ground that its continuation is no longer appropriate.
82. Mediation may also terminate otherwise than at the mediator's initiative:
- under article 14(2) of the Federal Mediation Law, where the parties agree to terminate the procedure without reaching a settlement;
 - under article 14(4), where either party gives notice that it is withdrawing from the procedure; or
 - under article 14(5), when the time limit for the mediation procedure expires.
83. No specific consequences are prescribed where the procedure terminates without a settlement. The parties return to the court proceedings, and the court determines the case on the merits.
84. A mediator could theoretically incur general liability under article 17 of the Federal Mediation Law if the mediator's conduct caused harm to either party.

(h) How Is the Mediator's Remuneration Paid, and by Whom?

- 85. Under article 10(2) of the Federal Mediation Law, the parties pay the costs of the mediation procedure in equal shares unless their agreement to mediate provides otherwise.
- 86. In practice, mediators strongly recommend equal payment because it reflects the principle of equality of the parties.
- 87. The law does not regulate the specific payment arrangements, including whether payment is made in advance, by way of a deposit, or only after the parties conclude a mediated settlement agreement or an agreement terminating the procedure. The matter is left to the mediator or governed by the rules of the relevant MSP.

6. Mediation in Relation to Court Proceedings

(a) At What Stage of Court Proceedings May the Parties Turn to Mediation?

- 88. Reconciliation, and therefore mediation as a form of reconciliation, is possible at any stage of court proceedings, including enforcement proceedings (article 138(4) of the RF APC, article 153.1(4) of the RF CPC, and article 137(2.1) of the RF CAJP).

(b) May Mediation Be Used after a Dispute Has Been Brought before a Court?

- 89. By definition, court-annexed mediation is possible only after a case has been brought before a court.

(c) Must a Judge Offer or Refer the Parties to Mediation, Either on a Party's Application or on the Court's Own Initiative? If So, at What Stage and in What Procedural Form? May an Order Referring the Parties to Mediation Be Appealed?

- 90. The law requires a court to facilitate settlement and take measures to reconcile the parties (article 138(1) of the RF APC, article 153.1(1) of the RF CPC, and article 135(3)(10) of the RF CAJP). The court may offer mediation as one method of resolving the dispute. The law does not, however, require the court to adjourn the case for settlement purposes of its own motion; it may do so either on its own initiative or on the parties' application.
- 91. Because reconciliation is possible at every stage of the proceedings, a hearing may likewise be adjourned for reconciliation at any stage.
- 92. Article 158(2) of the RF APC and article 169(1) of the RF CPC provide for adjournment of a hearing to enable the parties to reconcile. In administrative proceedings, the court issues an order directing a conciliation procedure and stays the administrative case (article 137.2(2) of the RF CAJP).
- 93. Only the order adjourning the hearing may be appealed, on the ground that it prevents the case from proceeding.

(d) Does an Agreement to Mediate Stay Court Proceedings Automatically or Only on a Party's Application? Does It Interrupt the Limitation Period?

- 94. An agreement to mediate does not automatically justify adjournment of a hearing. The court issues the relevant order on the parties' application (article 158(2) of the RF APC, article 169(1) of the RF CPC, and article 137.2(2) of the RF CAJP).
- 95. Under article 202(3) of the RF CC, recourse to mediation suspends the limitation period for the duration of the procedure but does not interrupt it.

(e) Are There Any Special Requirements for Mediation Connected with a Court Dispute?

- 96. Article 13 of the Federal Mediation Law provides a 60-day period for mediation. Under article 13(3), that period may not be extended for disputes already before a court.
- 97. Only a professional mediator satisfying the requirements of article 16 of the Federal Mediation Law may participate in court-annexed mediation.
- 98. The legislation establishes no other special requirements.

(f) Must the Mediator Inform the Court That Mediation Is Taking Place or Report Its Outcome, Apart from the Final Agreement?

- 99. Article 5(3) of the Federal Mediation Law expressly prohibits the mediator from doing so.

(g) May a Mediator Express Evaluative Opinions, Provide Legal Advice, or Suggest Ways of Resolving the Dispute?

- 100. In practice, expressing an evaluation, advising the parties, or suggesting possible solutions falls within the prohibitions established by article 15(6) of the Federal Mediation Law. Although the law contains no express prohibition in those terms, such a prohibition follows from its provisions.

(h) How Are the General Principles of Mediation Implemented or Safeguarded When a Mediator Participates during Court Proceedings?

- 101. Under Russian procedural legislation, a mediator is not a participant in the court proceedings.

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Do Courts Provide Dedicated Premises for Mediation?

- 102. Courts are not required to provide dedicated mediation premises. Paragraph 4 of the Review of Judicial Practice under Federal Law No. 193-FZ of 27 July 2010 on an Alternative Dispute Resolution Procedure with the Assistance of a Mediator (Mediation Procedure) for 2013–2014, approved by the Presidium of the RF Supreme Court on 1 April 2015, records that some courts established conciliation rooms, offices, and areas: separate premises equipped with computers where the parties could attempt to settle their dispute, including with the assistance of a mediator.
- 103. In practice, dedicated conciliation and mediation rooms are provided at the discretion of the management of the particular court.
- 104. Order No. 524/pr of the Russian Ministry of Construction dated 15 August 2018 approved the code of rules for federal court buildings (SP 152.13330.2018). Under that instrument, premises used for conciliation procedures are classified as ancillary premises.

(b) Are There Approved Regulations or Rules for Court-Annexed Mediation?

- 105. Under article 18 of the Federal Mediation Law, self-regulatory organizations of mediators, including MSPs, independently develop rules and procedures for mediation. Mediators who are members of the organization must comply with them.

106. There is currently no single professional body for mediators and no generally applicable rules or procedures for court-annexed mediation, either in procedural legislation or in the Federal Mediation Law.

(c) What Is the Maximum Duration of Mediation Conducted during Court Proceedings? May the Court Extend It?

107. Article 13 of the Federal Mediation Law provides a 60-day period for mediation. Under article 13(3), that period may not be extended for disputes already before a court.
108. In practice, courts may accommodate the parties in complex disputes by adjourning the case for an aggregate period exceeding 60 days where the parties wish to continue conciliation efforts.
109. For mediators, this means that, if the procedure exceeds the statutory period, they must invite the parties to conclude a new agreement to mediate. The previous agreement is “closed” by an agreement terminating that procedure, on the ground that the applicable period has expired.

8. Mediated Settlement Agreements and Their Enforcement

(a) What Is the Legal Status of a Mediated Settlement Agreement? Is It a Transaction, and Does It Become a Judicial Act after Approval?

110. Under article 12 of the Federal Mediation Law, a mediated settlement agreement is itself a civil-law transaction governed by Chapter 9 of the RF CC.
111. Once approved by a court, the mediated settlement agreement acquires the force of an enforceable title in the form of a judicial act (article 141(5) of the RF APC, article 153.10(5) of the RF CPC, and article 137.7 of the RF CAJP).

(b) Must a Court Approve a Mediated Settlement Agreement as a Court-Approved Settlement If It Does Not Contravene the Law, or Is Approval Discretionary?

112. Under the legislation, the court must approve such an agreement as a court-approved settlement. An order refusing approval may be appealed, while an order approving the settlement is not subject to appeal (article 141 of the RF APC and article 153.10 of the RF CPC).

(c) On What Grounds May a Court Refuse to Approve an Agreement? Does the Court Review Its Substantive Legality?

113. Under the applicable procedural legislation, the court reviews the agreement for legality and compliance with the rights and legitimate interests of the persons participating in the case. It examines and evaluates the factual circumstances only to the extent necessary to review the court-approved settlement (article 141 of the RF APC and article 153.10 of the RF CPC).

(d) How Is the Agreement Enforced, Including by Notarial Enforcement Endorsement, Simplified Court Approval, or a Damages Claim? What Consequences May Follow from Non-Performance, Including Judicial Fines?

114. When notarized, a mediated settlement agreement itself becomes an enforceable title that may be submitted directly to the bailiffs (article 12(5) of the Federal Mediation Law).
115. Where a mediated settlement agreement is approved as a court-approved settlement, it is enforced under the ordinary rules applicable to judgments.

116. A claim for damages or specific performance is possible only where the mediated settlement agreement exists as a civil-law transaction governed by Chapter 9 of the RF CC.
117. The consequences of non-performance are governed by enforcement legislation and include measures taken by the Federal Bailiff Service.
118. Procedural legislation does not provide for judicial fines in this context.
119. Enforcement is most difficult where a mediated settlement agreement exists only as a civil-law transaction, because it requires separate litigation and therefore largely defeats the purpose of the conciliation procedure.

9. Incentives and Barriers to the Use of Mediation in Court

(a) Are the Costs of Pre-Action Mediation Treated as Litigation Costs and Recoverable from the Unsuccessful Party?

120. Paragraph 3 of Resolution No. 1 of the Plenum of the RF Supreme Court of 21 January 2016 on Certain Issues concerning the Application of Legislation on Reimbursement of Costs Related to the Consideration of a Case states that costs incurred in considering, resolving, or settling a dispute out of court, including internal administrative appeals and mediation, are not litigation costs and are not recoverable under Chapter 7 of the RF CPC, Chapter 10 of the RF CAJP, or Chapter 9 of the RF APC.

(b) Are Financial Sanctions Available for an Unreasonable Refusal to Mediate?

121. Russian legislation does not provide sanctions for an unreasonable refusal to mediate.

(c) Are Tax or Court-Fee Benefits Available to Parties That Use Mediation?

122. Under article 333.40(1)(3) of the Tax Code of the Russian Federation, a court fee is partially refunded when the court approves a court-approved settlement:
 - 70% if approved at first instance;
 - 50% if approved on appeal; and
 - 30% if approved on cassation review.
123. No other benefits are available.
124. In practice, mediators and some MSPs seek to set their fee scales by reference to the court-fee refund available when a court-approved settlement is reached, making parties more willing to try mediation.

(d) What Principal Organizational, Economic, and Subjective Barriers Are Identified by Practitioners?

Organizational Barriers

- limited awareness among individuals and businesses;
- weak and fragmented interaction with the court system, which depends on individual mediators and the management of the particular court;
- a shortage of qualified mediators for particular categories of disputes and the absence of rigorous training standards; and

- the absence of centralized forums for interaction and the exchange of experience among mediators.

Economic Barriers

- the cost of mediation services, which compares unfavourably with the court fee as a clearer, simpler form of payment;
- the absence of State-subsidized mediation for particular categories of disputes; and
- the risk of financial loss if mediation fails, followed by additional litigation costs.

Subjective Barriers

- attitudes and legal nihilism, including the habit of resolving disputes through “force”;
- doubts about the mediator’s neutrality;
- the emotional barrier between parties in conflict and the perception that willingness to negotiate reflects a “weak” position; and
- resistance from the legal profession.

Other Barriers

- difficulties in enforcing mediated settlement agreements that take the form of civil-law transactions;
- vague and inconsistent terminology in the Federal Mediation Law; and
- the absence of any substantial incentive for a party to use mediation in court proceedings.

10. Other Issues

(a) Does the Legislation Provide for Alternative Conciliation Procedures, Such as Judicial Conciliation or Lawyer-Assisted Negotiations? How Do They Relate to Mediation?

125. Russian legislation recognizes three forms of conciliation procedure:
 - negotiations;
 - judicial conciliation; and
 - mediation.
126. These are separate forms of conciliation from which the parties may choose at their discretion. The parties determine the negotiation procedure entirely themselves. Judicial conciliation is the most extensively regulated form of dispute settlement.
127. The applicable procedural code and the Judicial Conciliation Rules approved by the RF Supreme Court in Resolution No. 41 of 31 October 2019 govern judicial conciliation and the requirements applicable to judicial conciliators.

(b) How Has the Country’s Historical Context Influenced the Modern Perception and Institutionalization of Mediation?

128. The relevant influences include:

- the loss after 1917 of the pre-revolutionary tradition of justices of the peace;
- the influence of Soviet collectivism and comrades' courts, under which confidentiality did not exist even in out-of-court dispute resolution and every dispute was resolved publicly;
- the top-down adoption of mediation legislation in the aftermath of the social, political and economic upheavals of the 1990s, at a time when society and economic relations were not yet ready for the institution;
- legal nihilism and generally low legal literacy, resulting in part from major reforms over recent decades; and
- a tradition of judicial and State paternalism, under which a conflict is expected to be resolved by an "authority figure" through a judicial act or legislation.

(c) What Are the State's Declared Objectives in Developing Mediation: Reducing Court Caseloads, Saving the Parties' Resources, or Supporting the Country's International Standing?

129. Under the Ministry of Justice's latest initiative, developed jointly with the Agency for Strategic Initiatives, the principal objectives of developing mediation are:
- to provide a rapid and confidential means of resolving conflicts;
 - to save businesses time and money;
 - to simplify enforcement of mediated settlement agreements; and
 - to reduce the burden on the court system.

(d) May a Judge Act as a Mediator?

130. Only a retired judge may act as a mediator (article 16(1.1) of the Federal Mediation Law).

(e) May Mediation Form Part of the Legal Aid System? If So, How Is the Mediator's Work Funded?

131. The Federal Mediation Law permits an individual mediator to provide mediation free of charge. An MSP, however, may operate only on a paid basis.
132. No funding mechanism is provided where a mediation procedure is conducted free of charge.

(f) How Are Online Platforms and Digitalization Changing Traditional Mediation Practice?

133. The number of mediation sessions conducted online has increased. Mediated settlement agreements may also be signed through electronic document-management services, significantly accelerating the procedure and facilitating signature where the parties are located in different constituent entities of the Russian Federation.

II. Kyrgyzstan

1. Principal Legislation and Other Instruments

- KR Mediation Law – Law No. 256 of the Kyrgyz Republic of 14 November 2025 on Mediation;
- KR CC – Civil Code of the Kyrgyz Republic No. 15 of 8 May 1996;
- KR CPC – Civil Procedure Code of the Kyrgyz Republic No. 14 of 25 January 2017;
- KR Code of Offences – Code of Offences of the Kyrgyz Republic No. 128 of 28 October 2021; and
- KR CrPC – Criminal Procedure Code of the Kyrgyz Republic No. 129 of 28 October 2021.

2. Concept and Principles of Mediation

(a) Understanding of Mediation in the Jurisdiction Examined

134. Article 3 of the KR Mediation Law defines mediation as a procedure for resolving a conflict or dispute with the assistance of one or more mediators, aimed at reconciling the parties' interests and reaching a mutually acceptable agreement (article 3(1)).
135. The law separately defines court-annexed and mandatory pre-action mediation:
- court-annexed mediation means a mediation procedure conducted following referral by a court in a case pending before it (article 3(2)); and
 - mandatory pre-action mediation means pre-action resolution of a conflict or dispute where required by law for the relevant category of cases (article 3(3)).
136. The law also separately defines online mediation (article 3(16)).

(b) Are the Principles of Voluntariness, Confidentiality, and Neutrality Established by Law?

137. Under article 4, mediation is generally conducted on the basis of the following principles:
- **voluntariness** (article 4(1)(1)). No person may compel either the parties or the mediator to resolve a dispute through mediation (article 5). This principle does not apply to an information session with a mediator (article 4(3));
 - **self-determination and equality of the parties**. Unless otherwise provided by law, the parties select the mediator or mediation centre themselves and determine the matters to be addressed, while other participants may provide only recommendations and advice. The parties must also have equal opportunities during the procedure and in developing a mutually acceptable agreement (article 6);
 - **mediator neutrality**. The mediator is independent of the parties, public authorities, local government bodies, their officials, and other natural and legal persons. If circumstances affecting neutrality are identified, the mediator must withdraw and state the reasons. The mediator may not represent or defend either party, decide the merits of the dispute, or advise or recommend how the dispute should be resolved; the mediator may advise only on the conduct of the procedure (article 7); and

- **confidentiality.** Both the mediator and the mediation centre must keep confidential any information obtained during the procedure. The duty continues after the mediator ceases practising. The parties are also bound by confidentiality unless otherwise agreed. Neither the parties nor other participants may rely in court on information obtained during the mediation (article 8).

(c) What Are the Limits of Confidentiality? May the Negotiations Be Referred to in Court?

138. The principle of confidentiality does not apply where disclosure is required (article 8(8)):
- to protect a person's life, health, or liberty, or a child's interests;
 - to establish that a mediated settlement agreement was concluded where the other party disputes or denies it;
 - to enforce a mediated settlement agreement; or
 - to defend the interests of a person who disclosed information in legal or disciplinary proceedings arising from the mediation and directed against that person.

(d) Is Legality a Required Principle for a Mediated Settlement Agreement?

139. The mediator does not review the mediated settlement agreement for compliance with the law. The KR Mediation Law nevertheless allows other persons to participate in the procedure (article 2(12)), including lawyers, party representatives, and consultants, who may provide legal opinions and recommendations concerning the agreement.
140. If a mediated settlement agreement is submitted for court approval, the court reviews its provisions for legality (article 43(4) of the KR CPC).

3. Scope of Mediation and Its Relationship with the Courts

(a) What Types of Disputes Are Covered, Including Civil, Commercial, Employment, and Administrative Disputes, and What Exclusions Apply?

141. Mediation applies to disputes arising from civil, employment, family, and other legal relationships, including business activities, as well as disputes considered in criminal proceedings at the pre-trial and trial stages (article 2 of the KR Mediation Law).
142. The law establishes one general exclusion: mediation is not permitted where it affects third-party rights and interests.
143. More detailed limitations on reconciliation are prescribed by specific legislation. Article 505 of the KR CrPC, for example, permits reconciliation in cases involving minor and less serious offences.
144. Administrative offences are governed by the KR Code of Offences. Because that Code contains no mediation provisions, reconciliation appears to be unavailable in administrative-offence proceedings.

(b) Legal Status, Role, and Duties of the Mediator in Court Proceedings

145. Under article 19(1) of the KR Mediation Law, a mediator must be at least 25 years old, hold a higher education qualification, have a certificate confirming at least 80 hours of basic mediator training under a programme approved by the Council of the Chamber of Mediators

of the Kyrgyz Republic, hold a mediator licence, and be a member of both the Chamber of Mediators and a mediation centre.

146. Article 19(2)–(3) of the KR Mediation Law provides that public and municipal servants may not act as mediators, nor may persons declared legally incapable or of limited legal capacity, persons with an outstanding or unexpunged conviction, or persons registered with a substance-abuse or neuropsychiatric clinic.
147. More detailed information on membership fees, continuing-training requirements, and mediator reputation is not yet available because the relevant rules are currently being approved by the Chamber of Mediators following its constituent congress on 14 March 2026. Under Chapter 3 of the KR Mediation Law, the Chamber of Mediators is a self-regulatory organization in which all mediators must hold membership. The Council of the Chamber is its principal executive body. An Ethics Commission is also established within the Chamber under article 16. It considers complaints concerning mediators' acts or omissions and submits decisions on the suspension or termination of mediator status to the Council.
148. Current Kyrgyz legislation requires neither a legal education for mediators nor any special qualifications for mediators participating in court-annexed mediation.
149. Mediators must complete continuing professional development through the Chamber of Mediators' centre for at least 16 hours each year (article 21(4) of the KR Mediation Law). Compliance is a condition for renewal of mediator status; the certificate issued after basic training is valid for three years.
150. Mediators may also specialize in particular fields. Mediation centres are responsible for specialist continuing professional development (article 2(8) and article 19(5) of the KR Mediation Law).
151. A mediator must complete at least 50 hours of specialist continuing professional development to mediate family or employment disputes, criminal or penal-enforcement matters, or cases involving a child (article 19(7) of the KR Mediation Law).
152. Under current Kyrgyz legislation, a mediator acts entirely independently of the court. Article 27(6) of the KR Mediation Law, which addresses categories of civil cases requiring a mandatory pre-action mediation information session, the precise list of criminal cases eligible for mediation, and arrangements for access to mediation assistance, will enter into force only on 1 January 2027 and leaves many matters to the Cabinet of Ministers. The mediator's procedural role may therefore be clarified and expanded in the future.
153. At present, court referrals to mediators and interaction between mediators and courts are organized in a manner similar to that in Russia.
154. The specific grounds for mediator liability will probably be established in future rules of the Chamber of Mediators and the mediation centre of which the mediator is a member. Certain provisions of the KR Mediation Law nevertheless require a mediator to:
 - comply with the principles of mediation;
 - before appointment, disclose to the parties and the mediation centre any circumstances that may affect the mediator's independence or impartiality (article 26 of the KR Mediation Law); and
 - be responsible for organizing the mediation and ensuring compliance with the procedural rules.

155. The law provides for professional liability for breaches of mediation procedure. Under article 20, the Council of the Chamber of Mediators may suspend or terminate mediator status on the recommendation of the Ethics Commission following disciplinary proceedings under article 17 of the KR Mediation Law. A breach of the Code of Professional Ethics may result in an initial suspension of up to six months and, for a repeated breach, up to one year.
156. Article 35 of the KR Mediation Law provides that anyone who breaches the Law is liable. No additional special provisions currently appear in other legislation.
157. Under article 31(1), mediation may be provided for payment or free of charge. An information session to which the court refers the parties is free of charge (article 32(1)). Where referral is made by a public authority, local government body, or other authorized person, both parties to the conflict pay for the information session (article 32(2)).
158. The Cabinet of Ministers must determine the payment arrangements for information sessions and mediation under the State-funded legal assistance system, including free mediation assistance for individuals (article 32(3)).

4. Mediation in Relation to Court Proceedings

159. Mediation may be used before proceedings are commenced, during court proceedings as court-annexed mediation, during arbitral and enforcement proceedings, and while a sentence is being served (article 25(2)(2) of the KR Mediation Law).
160. Under article 505(3) of the KR CrPC, reconciliation may be achieved from the commencement of pre-trial proceedings until the cassation court issues its decision.
161. Under article 43(3) of the KR CPC, the parties may terminate a case by court-approved settlement at any stage of the proceedings.
162. Mediation may therefore be used both before and during court proceedings.
163. During preparation of a civil case for trial, the judge explains the parties' right to resolve the dispute through mediation and may refer them to a mandatory information session with a mediator (article 153(13) of the KR CPC). At the beginning of the hearing on the merits, the court again asks whether the parties wish to conclude a court-approved settlement or mediate (article 174 of the KR CPC).
164. Under articles 216–217 of the KR CPC, the court stays the proceedings when the parties conclude an agreement to mediate.
165. The parties' mutual agreement to resolve the dispute through out-of-court mediation interrupts the limitation period (article 218(3), part 1, of the KR CC). The limitation period begins to run afresh after interruption.
166. Under article 125 of the KR CPC, all unexpired procedural periods are suspended while the proceedings are stayed, including a stay for mediation.
167. The KR Mediation Law does not permit the mediator to inform the court of any matter. The mediator's powers may later be clarified in rules approved by the Chamber of Mediators or amendments adopted by the Cabinet of Ministers.
168. The KR Mediation Law applies the general mediation principles equally to court-connected and out-of-court procedures. The mediator therefore follows those principles throughout the mediation. Under article 7, the mediator may not advise the parties or propose solutions

concerning the subject matter of the dispute but may provide information on the conduct and process of mediation.

5. Procedural Aspects of Interaction between Courts and Mediation

(a) What Is the Maximum Duration of Mediation Conducted during Court Proceedings? May the Court Extend It?

169. Under article 24 of the KR Mediation Law, the agreement to mediate determines the duration of mediation, which may not exceed 60 calendar days. The parties may agree to extend the period by no more than 30 calendar days.
170. Court-annexed mediation must be completed within 30 calendar days. By mutual agreement of the parties and the mediator, this period may be extended by no more than 30 calendar days.
171. Criminal procedure and penal-enforcement legislation determine the duration of mediation in matters arising from criminal-law relationships.

(b) Mediated Settlement Agreements and Their Enforcement

172. Article 2(7) of the KR Mediation Law defines a mediated settlement agreement as a written agreement constituting a transaction, recording the outcome agreed by the parties to the mediation, and prepared in accordance with the requirements of the Mediation Law.
173. A mediated settlement agreement in Kyrgyzstan is therefore treated as a transaction and is subject to the general requirements of Part I of the KR CC.
174. Under the KR CPC, a mediated settlement agreement may be approved as a court-approved settlement. The court reviews it for compliance with the law (article 43(4) of the KR CPC). The court must therefore approve the agreement as a court-approved settlement, provided that it is lawful.
175. Under article 175(7) of the KR CPC, a court-approved settlement that is not performed voluntarily is enforced on the basis of a writ of execution on the application of an interested party. Once approved by the court as a court-approved settlement, a mediated settlement agreement therefore has the legal force of a judicial act.
176. At the parties' request, a mediated settlement agreement may be certified by a notary or another official authorized to perform notarial acts under notarial legislation (article 29(3) of the KR Mediation Law). If the agreement transfers title to property subject to mandatory registration, it must be notarized and constitutes a document of title; notarization is mandatory in that case (article 29(4)).
177. The consequences of non-performance depend on how the agreement was formalized:
 - an agreement approved by the court as a court-approved settlement is enforced through enforcement proceedings; and
 - for any other mediated settlement agreement, whether or not notarized, the party may obtain a notarial enforcement endorsement under article 316(13) of the Instruction on the Performance of Notarial Acts by Notaries of the Kyrgyz Republic, approved by Government Resolution No. 733 of 29 December 2023, or bring a civil claim for non-performance of the transaction.

6. Incentives and Barriers to the Use of Mediation in Court

178. Kyrgyz legislation does not expressly classify pre-action mediation costs as litigation costs. Article 109 of the KR CPC, however, permits “other necessary expenses recognized by the court” to be treated as litigation costs.
179. The law does not impose liability for an unreasonable refusal to mediate or define the concept of an “unreasonable refusal”. Procedural legislation nevertheless provides incentives when a claim or appeal is filed and a party states an intention to settle amicably, provided that a corresponding application is attached:
- article 106(2.1) of the KR CPC permits full deferral of payment of one half of the court fee at first instance; and
 - article 325(6) permits deferral of payment of one half of the court fee on appeal.

7. Other Issues

(a) How Are Online Platforms and Digitalization Changing Traditional Mediation Practice?

180. The KR Mediation Law devotes considerable attention to regulating mediation conducted by digital means. Article 2(16) defines online mediation as mediation conducted wholly or partly through digital services, digital technology systems, and/or a digital ecosystem in accordance with the digital legislation of the Kyrgyz Republic.
181. Article 25(2) of the KR Mediation Law provides that mediation may be conducted in person or online.
182. Article 25(5)–(9) establishes the requirements and procedure for online mediation:
- online mediation requires the voluntary consent of all parties and the mediator;
 - the platform used must comply with the KR Mediation Law and the digital legislation of the Kyrgyz Republic and must ensure:
 - confidentiality and a secure connection, through end-to-end encryption or another level of protection preventing unauthorized access;
 - compliance with personal-data protection and information security requirements;
 - that no third person is present without the parties’ consent; and
 - that the online session is not recorded, except where expressly permitted by the KR Mediation Law;
 - before online mediation begins, the mediator verifies the participants’ identities and authority, ensures equal access to information, and enables each party to present its position fully, orally and/or in writing;
 - if a technical failure occurs, online mediation is suspended while the participants agree on how and when the procedure will continue. If the failure cannot be remedied, the parties may continue in person or on another platform;
 - any agreement reached may be concluded electronically using a qualified electronic signature or another method recognized by the legislation of the Kyrgyz Republic and has the force of a mediated settlement agreement; and

- where the parties are in different States, online mediation is conducted in accordance with applicable international treaties.

III. Kazakhstan

1. Principal Legislation and Other Instruments; Terms and Abbreviations

183. Laws and Other Regulatory Instruments

- RK Mediation Law – Law No. 401-IV of the Republic of Kazakhstan of 28 January 2011 on Mediation, as amended through 22 January 2025. This is the principal instrument governing social relations relating to the organization of mediation;
- RK CPC – Civil Procedure Code of the Republic of Kazakhstan. Chapter 17, entitled “Conciliation Procedures”, governs, among other matters, mediation during court proceedings;
- RK APPC – Administrative Procedural and Process-Related Code of the Republic of Kazakhstan. It governs mediation during administrative proceedings;
- RK Criminal Code – Criminal Code of the Republic of Kazakhstan. Article 68 provides grounds for release from criminal liability following reconciliation of the parties, including reconciliation achieved through mediation;
- RK Self-Regulation Law – Law No. 390-V of the Republic of Kazakhstan of 12 November 2015 on Self-Regulation. The Code of Ethics of the Association of Mediators refers to it as one of the legal foundations of the Association’s activities; and
- Order No. 244-NQ, or the Training Rules – Order No. 244-NQ of the Minister of Information and Social Development of the Republic of Kazakhstan of 14 June 2023 approving the Rules for Training under Mediator Training Programmes.

184. Bodies and Organizations

- Authorized mediation body – the central executive body, currently the Ministry of Culture and Information of the Republic of Kazakhstan, responsible for State policy and regulation in the field of mediation (articles 2 and 8-1 of the RK Mediation Law).
- Mediator organizations – non-profit self-regulatory organizations bringing mediators together, such as the Association of Mediators of the Republic of Kazakhstan. They maintain registers of professional mediators and train and supervise their members (article 13 of the RK Mediation Law).
- Association or union of mediators – an association of mediator organizations established to coordinate their activities and develop common standards, including a code of professional ethics (articles 2 and 13 of the RK Mediation Law).
- Association Ethics Committee – a body of the Association of Mediators that monitors compliance with the Code of Professional Ethics.

185. Mediation Participants and Documents

- Mediator – an independent natural person engaged by the parties to conduct mediation professionally or on a community basis (article 2 of the RK Mediation Law).
- Professional mediator – a mediator who provides services for remuneration, holds a higher education qualification and a training certificate, and is included in the register of professional mediators (article 9 of the RK Mediation Law).

- Community mediator – a mediator who acts without remuneration, is elected by the local community from among respected persons over 40 years old, and is included in the register of community mediators (articles 9 and 15 of the RK Mediation Law).
- Mediation agreement – a written agreement between the parties and the mediator commencing the mediation procedure and containing all essential terms (article 21 of the RK Mediation Law).
- Dispute or conflict settlement agreement – the final document signed by the parties and the mediator following a successful mediation, recording the terms agreed (article 27 of the RK Mediation Law).
- Mediability of a conflict – the characteristic determining whether a particular conflict can or cannot be resolved through mediation, as defined in the Training Rules.

186. Other Terms

- Caucus – a private meeting between the mediator and one party separately from the other party.
- Mediation clause – a contractual provision requiring all disputes arising from the contract to be referred to mediation.

2. Concept and Principles of Mediation

(a) Understanding of Mediation in the Jurisdiction Examined

187. In the Republic of Kazakhstan, mediation is understood as a structured, flexible, and voluntary procedure for resolving a dispute or conflict with the involvement of a neutral intermediary, the mediator.
188. Mediation is a procedure in which one or more mediators assist the parties to resolve a dispute or conflict and reach a mutually acceptable solution based on their voluntary consent (article 2 of the RK Mediation Law).
189. The principal features of mediation in Kazakhstan are as follows:
- Mediation is regarded as an important means of reducing court caseloads and enabling the parties to resolve a conflict themselves without public authority imposing a binding decision.
 - Unlike adjudication, in which the decision is based on law, mediation is governed by the parties' will and may consider their business interests, future relationships, and other considerations that are not exclusively legal.
 - Mediation is presented not only as a means of resolving a particular dispute but also as a way to preserve or restore family, business, employment, and other relationships. This is particularly valuable in commercial and family disputes.
 - Kazakhstan emphasizes the connection between mediation and historical traditions of reconciliation in Kazakh customary law, including "*kelisim*", "*bitim*", and "*zharasu*", which supports the institution's cultural acceptance.
 - Mediation is actively used both before proceedings and at every stage of litigation, including first instance, appeal, cassation review, and enforcement. Courts must assist the parties in reaching reconciliation.

- Legislation and practice distinguish professional, paid mediation from community mediation provided free of charge, and establish features for mediation in civil, employment, family, and administrative disputes and in criminal proceedings.
- The State declares its support for mediation through an authorized body, approved training rules, legal incentives such as court-fee refunds, and the maintenance of registers.

(b) Are the Principles of Voluntariness, Confidentiality, and Neutrality Established by Law?

190. All three principles – voluntariness, confidentiality, and neutrality or impartiality – are expressly established as fundamental principles in the RK Mediation Law.

- The principle of voluntariness under article 5 of the RK Mediation Law means that:
 - mediation is possible only where the parties mutually and voluntarily agree to it in a mediation agreement (article 5(1));
 - the parties may withdraw from mediation at any stage without giving reasons (article 5(2));
 - the parties are free to select the matters for discussion, including matters not regulated by law (article 5(4)); and
 - the Code of Ethics of the Association of Mediators further provides that a mediator may not impose a solution and that the parties may terminate their participation at any time.
- The principle of mediator independence and impartiality under article 7 of the RK Mediation Law means that:
 - the mediator is independent of the parties and other people and may choose the methods of work independently (article 7(1));
 - the mediator must be impartial, conduct the mediation in the interests of both parties, and ensure their equal participation (article 7(2)); and
 - where circumstances prevent impartiality, the mediator must withdraw (article 7(2)). Sections 2.3, 3.2, and 3.3 of the Code of Ethics further detail this requirement.
- The principle of confidentiality under article 8 of the RK Mediation Law means that:
 - participants may not disclose information obtained during mediation without the written permission of the party that provided it (article 8(1));
 - the mediator has testimonial immunity and may not be examined as a witness concerning information obtained during mediation (article 8(2)), which is a central safeguard;
 - unauthorized disclosure gives rise to liability under the law (article 8(3)); and
 - section 3.5 of the Code of Ethics elaborates the principle by addressing secrecy, separate sessions and the non-disclosure of information obtained during *caucuses*, explanation of the applicable rules, and data protection.

191. Article 4 of the RK Mediation Law also lists the principles of mediation as the foundations of the procedure. Kazakhstan's legislation therefore does more than declare those principles: it establishes mechanisms to safeguard them, including liability for breaches.

(c) What Are the Limits of Confidentiality? May the Negotiations Be Referred to in Court?

192. Confidentiality under Kazakhstan's mediation legislation is broad but not absolute:
- General rule. All information obtained during mediation is confidential. Participants, including the parties, the mediator, and invited people may not disclose information without the consent of the party that provided it (article 8(1) of the RK Mediation Law). This also applies to information obtained during private meetings or *caucuses*, which may not be disclosed to the other party without consent (section 3.5 of the Code of Ethics).
 - Exceptions to confidentiality, in which disclosure is permitted, include:
 - the express written permission of the party that provided the information (article 8(1)); and
 - cases expressly provided by the legislation of the Republic of Kazakhstan (article 8(2) and section 3.5 of the Code of Ethics). Although the law does not provide an exhaustive list, these may include threats to life or health, the preparation or commission of an offence, and a requirement to provide information at the request of law-enforcement authorities during a criminal investigation. Section 5.3 of the Code of Ethics also permits information concerning serious violations to be transmitted to competent authorities.
193. Generally, the negotiations may not be referred to in court. The principal safeguard is the mediator's testimonial immunity under article 8(2): the mediator may not be examined in court concerning information obtained during the procedure.
194. The law does not prohibit the parties from using information from mediation in court as categorically as it prohibits the mediator from disclosing it. Nevertheless, the principles of good faith and the nature of the procedure preclude reliance in later proceedings on proposals, admissions, or concessions made during mediation. Such use would be inconsistent with the creation of a safe space for open dialogue.
195. If a mediation participant other than the mediator breaches confidentiality and seeks to use the information in court, the other party may object to the admission of the evidence based on confidentiality and breach of the mediation agreement. The laws of the Republic of Kazakhstan provide for liability for such disclosure (article 8(3) of the RK Mediation Law).

(d) Is Legality a Required Principle for a Mediated Settlement Agreement?

196. Legality is a mandatory condition for a mediated settlement agreement in Kazakhstan, although article 4 of the RK Mediation Law does not identify it as a separate principle. It is implemented through several other provisions and requirements.
197. Conditions for the validity of the agreement include the following:
- A dispute or conflict settlement agreement must establish, modify, or terminate the parties' rights and obligations (article 27(4) of the RK Mediation Law). This corresponds to the definition of a civil-law transaction, which must, as a general rule, comply with the law.

- The principle of voluntariness expressly refers to legality: the parties are free to select the matters for discussion and the terms of an agreement “that does not infringe the rights and legally protected interests of the parties and third persons” (article 5(4) of the RK Mediation Law).
198. Judicial review of legality is also available:
- where a mediated settlement agreement is concluded during court proceedings, it must be approved by the court (article 27(5) of the RK Mediation Law); and
 - the court may refuse approval if the agreement contravenes the law or infringes the rights and legitimate interests of other persons. This follows directly by analogy with a court-approved settlement and from the general principle in article 5 of the RK Mediation Law. Case law emphasizes that a mediated settlement agreement may not declare transactions invalid, because that power belongs exclusively to the court.
199. The law excludes mediation where a dispute affects or may affect the interests of third persons who do not participate in the mediation, and where a party has been declared legally incapable (article 1(2) of the RK Mediation Law). This indirectly safeguards legality by excluding disputes in which mediation could potentially infringe on another person’s rights.
200. In criminal proceedings, a mediated settlement agreement must seek to remedy the harm and reconcile the parties, consistently with the objectives and principles of criminal law (article 27(6) of the RK Mediation Law).
201. The Code of Professional Ethics of the Association of Mediators of the Republic of Kazakhstan also requires the mediator to ensure the legality of the procedure. In particular, the mediator may terminate the procedure if it is being used for unlawful purposes (section 3.6 of the Code).

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What types of disputes are covered (civil, commercial, labour, administrative, etc.)?

202. The scope of mediation in Kazakhstan is defined by article 1 of the Mediation Law and is very broad. Mediation applies to the following categories of disputes (conflicts):
- Disputes arising from civil-law relations:
 - Property disputes, including division of property, debt recovery, performance of contracts, and inheritance disputes.
 - Contractual disputes between legal entities, including business mediation and commercial disputes.
 - Consumer disputes.
 - Disputes arising from banking and credit relations.
 - Disputes arising from labour relations:
 - Individual labour disputes, including reinstatement, recovery of wages, and changes to working conditions.
 - Collective labour disputes.
 - Disputes arising from family relations:

- Divorce and division of jointly acquired property.
- Determination of children's place of residence and arrangements for contact with them.
- Recovery of maintenance and other disagreements between family members.
- Disputes arising from administrative-law relations:
 - Disputes involving administrative authorities and public officials. There is, however, an important limitation: mediation in administrative proceedings is permitted only where the respondent, namely the administrative authority, has administrative discretion, that is, the ability to choose between lawful courses of action within the limits established by law (article 27-1 of the Law).
- Disputes considered in criminal proceedings:
 - Cases concerning criminal misdemeanours and minor or medium-gravity offences.
 - Serious offences in the circumstances provided for by article 68(2) of the Criminal Code of the Republic of Kazakhstan, for example certain offences against the person committed for the first time. Mediation does not apply, however, to corruption offences or other offences against the interests of the civil service (article 1(4) of the Mediation Law).
- Disputes arising in enforcement proceedings: at the stage of enforcement of a judicial act, the parties may also conclude a mediated settlement agreement (article 25-1 of the Mediation Law).

(b) Are there exclusions from the scope of mediation, for example disputes involving public interests?

203. Kazakh legislation establishes several exclusions from the scope of mediation designed to protect public interests, the rights of third parties, and the interests of particularly vulnerable categories of people. These exclusions are set out in article 1 of the Mediation Law and may be grouped as follows:
- Disputes affecting the interests of third parties:
 - Mediation does not apply to disputes that affect or may affect the interests of third parties who do not participate in the mediation (article 1(2) of the Law). This rule is intended to ensure that an agreement between the parties does not infringe the rights of people who have no opportunity to participate in developing the solution.
 - Disputes involving people lacking or having limited legal capacity:
 - Mediation does not apply to disputes involving people declared by a court to lack or have limited legal capacity (article 1(2) of the Law). Such people cannot, as a matter of law, protect their rights independently, and the State performs that function through the courts or guardianship authorities.
 - Certain categories of criminal cases:
 - Mediation does not apply in criminal cases concerning corruption offences or other offences against the interests of the civil service and public administration (article 1(4) of the Law). Such offences affect public order and the authority of the State, and their resolution therefore cannot be left to the discretion of private persons.

- Disputes involving public authorities, subject to limitations:
 - Mediation applies to disputes involving individuals and/or legal entities where one party is a public authority only in cases expressly provided for by the laws of the Republic of Kazakhstan (article 1(3) of the Mediation Law). Each such dispute must therefore be covered by a specific statutory provision permitting mediation.
 - In administrative proceedings, mediation is permitted only where the respondent, namely the administrative authority, has administrative discretion, that is, the lawful ability to depart from a strictly prescribed course of action (article 27-1). Where the authority's conduct is strictly regulated and it has no freedom of choice, mediation is impossible because there is nothing to negotiate.
- Other cases provided by law:
 - Article 1(2) of the Mediation Law allows additional exclusions to be introduced by other legislative acts of the Republic of Kazakhstan.

4. The Role of Judicial Practice and the Judiciary's Approach

(a) What are the general statistics on the use of mediation in court cases?

204. The available materials contain detailed statistics demonstrating significant growth in, and active use of, mediation within Kazakhstan's judicial system.⁵
205. The figures for 2023–2025 are as follows:
 - Civil cases:
 - 2023: of 434,761 civil cases commenced, 79,937, or 18.6%, were discontinued following conciliation procedures. Of these, 63,926 cases, representing 80% of all conciliations and 14.7% of all cases, were discontinued following the conclusion of a mediated settlement agreement.
 - 2025 forecast/estimate: according to an analytical report, more than 300,000 mediations were expected to pass through the courts in 2025, and 46% of disputes suitable for mediation were expected to end in settlement.
 - Administrative cases under the Administrative Procedural and Process-Related Code:
 - 2023: 31,123 cases were filed with the courts. Mediated settlement agreements were concluded in 3,253 cases, representing 15.4% of all cases considered in this category.
 - Cases before the Astana International Financial Centre Court and its International Arbitration Centre:
 - In 2023, 1,748 of the 2,271 commercial cases resolved, or 77%, were settled through mediation.
 - Overall effectiveness and trends:
 - The number of successful mediations between 2011 and 2023 exceeded 500,000.

⁵ Mediator.kz. (2025). *Mediation in Kazakhstan: A Complete Analysis*. [URL](#)

- The number of mediations increased more than 1,000-fold over 13 years. This growth is associated with the introduction of the Supreme Court's Törelük information system and incentives for pre-trial settlement.
- Settlement rates vary by category: up to 60% in family disputes, 46% in civil disputes, 42% in labour disputes, 38% in business mediation, and 35% in criminal cases.
- Mediation takes between 1 and 30 days, whereas court proceedings may last for months.
- Where a mediated settlement agreement is concluded in court, the court fee is refunded to the claimant in full, that is, 100%.

(b) Are there any guiding interpretations by the highest courts, precedents, or similar authorities concerning mediation?

206. Although Kazakhstan belongs to the civil-law tradition, in which judicial precedent is not formally a source of law, Supreme Court guidance and established judicial practice play an important orienting role. For example, the Regulations on the Implementation of a Pilot Project to Introduce Pre-trial Settlement of Disputes (Conflicts) through Mediation for Certain Categories of Disputes, approved by an order of the Chair of the Supreme Court of the Republic of Kazakhstan dated 27 January 2017, established a practical framework for developing pre-trial mediation.

(c) What is judges' attitude towards mediation? What concerns or difficulties do they identify?

207. Judges in Kazakhstan may be described as positive and engaged in their approach to mediation, while remaining conscious of existing problems and difficulties. They regard mediation as an important tool for reducing conflict and court caseloads. Judges actively participate in developing the institution, propose legislative and practical improvements, and see its potential for deeper and more durable dispute resolution, particularly in sensitive areas such as family relations.
208. The concerns and difficulties identified by judges include the following:
- Difficulties relating to the content and enforcement of mediated settlement agreements:
 - Poor drafting. Agreements are often said to contain numerous legally insignificant provisions and declaratory clauses, while their drafters confuse the agreement to mediate with the settlement agreement. This makes the agreements legally fragile.
 - Inability to amend the terms. A significant problem arises where circumstances change after a court has approved an agreement, but the law does not provide for amending or terminating an agreement already concluded. Judges observe that parties attempt to circumvent this by filing interlocutory appeals or applications to correct clerical errors, which constitutes improper use of procedural mechanisms.
 - Enforceability. Difficulties arise with agreements containing conditions precedent, such as a percentage-based penalty, because a bailiff cannot calculate the amount independently, requiring further judicial intervention.
 - Abuse in criminal proceedings. The literature points to a risk of concealed manipulation where the parties sign two mutually inconsistent agreements, one to secure exemption from criminal liability and another providing for an actual deferral

of payment, in order to circumvent the requirement that harm be compensated in full when the case is discontinued.

- Problems relating to the conduct of the parties and their representatives:
 - Failure to comply with mandatory pre-trial settlement. Many creditors, including banks and debt-collection agencies, and their lawyers reportedly disregard statutory pre-trial requirements and apply directly to court. This is attributed not to legal illiteracy, but to lawyers having already received their fees and lacking an interest in a swift outcome.
 - Lack of trust in the procedure.
 - Unwillingness to make concessions. Financial institutions are often unwilling to reduce penalties or grant deferrals, even though such concessions may increase the likelihood of debt recovery.
- Problems of legal regulation:
 - Deficiencies in legislation concerning conditions precedent, third-party rights, and the enforceability of orders approving settlement agreements.
 - The limited use of mediation in criminal proceedings: the inability to discontinue a case while deferring performance of obligations deprives mediation of a significant advantage over simple reconciliation.

(d) How active is the mediation community in cooperating with the courts?

209. The available sources indicate a high and institutionalized level of engagement by the mediation community with Kazakhstan's judicial system. Cooperation extends well beyond merely conducting procedures following court referrals.
210. The forms of engagement and cooperation include:
- Participation in court-annexed mediation:
 - Professional mediators entered in the registers of mediation organizations, such as the Association of Mediators of the Republic of Kazakhstan, are engaged by the parties to conduct mediation at every stage of court proceedings. The high proportion of cases discontinued following mediation, including 63,926 civil cases in 2023, demonstrates the routine nature of this professional work.
 - Development and harmonization of professional standards:
 - Through its organizations and associations, the mediation community develops and approves internal instruments that directly affect the quality of court-annexed mediation. One example is the Code of Professional Ethics for Mediators of the Association of Mediators of the Republic of Kazakhstan, which establishes standards of conduct, including independence, confidentiality, and impartiality, that are binding on mediators working with the courts.
 - These organizations also develop mediation standards and procedural rules, referred to in article 17 of the Mediation Law, which the parties may apply in court proceedings.
 - Education and professional training:

- Mediation organizations are the principal centres for training professional mediators. They ensure a supply of qualified specialists capable of working with complex court disputes.
- They also organize continuing professional development, which is a statutory duty of mediators under article 10 of the Law.
- Information and methodological support:
 - Mediation organizations maintain public registers of professional mediators under article 14 of the Law, allowing courts and parties to select a verified specialist. The register and website of the Association of Mediators of the Republic of Kazakhstan, mediator.kz, are important sources of information.
 - Mediation organizations publish analytical materials, news, and guidance, thereby improving the legal literacy of participants in proceedings and judges' awareness.
- Disciplinary oversight:
 - Bodies within mediation organizations consider complaints concerning mediators' conduct, including in court-annexed mediation. This supports the quality of their work and confidence in the procedure among judges and parties (section 5 of the Code of Ethics).

5. Legal Status, Role, and Duties of the Mediator in Court Proceedings

(a) General Requirements for Mediators

211. The requirements for mediators in Kazakhstan differ depending on whether they practise professionally for remuneration or act as community mediators without remuneration. These requirements are set out in article 9 of the Mediation Law and in the Rules on Mediation Training.
212. General requirements applicable to all mediators under article 9 of the Law:
 - Independence and impartiality: a mediator must be independent, impartial, and have no interest in the outcome of the case.
 - Age: there is no single age threshold; different requirements apply to professional and community mediators.
 - Entry in a register: a mediator must be entered into a register of professional or community mediators.
 - Consent: a mediator must consent to perform the mediator's functions in a particular case.
 - A person may not act as a mediator if that person:
 - is authorized to perform public functions or is treated as holding an equivalent status;
 - has been declared by a court to lack or have limited legal capacity;
 - is subject to criminal prosecution; or
 - has an unspent or unexpunged conviction.

213. Requirements for professional mediators under article 9(4) and article 14 of the Law:
- Education: a higher-education qualification in any field; a law degree is not required.
 - Age: at least 25 years.
 - Specialized training: a certificate confirming completion of an approved mediator-training programme. The General Mediation Course comprises at least 72 academic hours under the Rules on Mediation Training.
 - Membership of a mediation organization: a professional mediator must be a member of a mediation organization, such as the Association of Mediators of the Republic of Kazakhstan, and be entered in its register of professional mediators. Membership is a mandatory condition for practice.
 - Continuing professional development: a mediator must regularly improve their professional qualifications through mediator-training programmes (article 10(2) of the Law). Trainers of mediators must provide evidence of professional development completed no more than one year before the start of the training under the Rules on Mediation Training.
 - The law prohibits mediation organizations or associations from charging admission fees (article 13(5)). Other forms of membership contributions, such as annual fees, are not prohibited and may be established by an organization's internal documents to cover the costs of maintaining the register, providing methodological support, and related expenses.
 - Mediation is not an exclusive occupation (article 9(6)). A mediator may engage in any other activity not prohibited by law, for example as a lecturer, advocate, or entrepreneur, if it does not create a conflict of interest.
214. Requirements for community mediators under article 9(3) and article 15 of the Law:
- Age: at least 40 years.
 - Election: elected by a meeting or assembly of the local community.
 - Reputation: the person must have "extensive life experience, authority, and an impeccable reputation".
 - Entry in a register: entered by the akim in the register of community mediators.
215. An express good-repute requirement applies only to community mediators, who must have an "impeccable reputation". For professional mediators, professional reputation is safeguarded indirectly through:
- verification that the person has no criminal conviction;
 - membership of a self-regulatory organization, which may refuse entry in, or remove a person from, the register; and
 - compliance with the Code of Professional Ethics, breach of which may result in disciplinary liability, including expulsion from the Association.
- (b) Must a mediator hold a university law degree, either generally or specifically when participating in court proceedings?**
216. A university law degree is not required for mediators in Kazakhstan.

217. Mediation in Kazakhstan is framed not as the provision of legal advice, but as assistance to the parties in finding a mutually beneficial solution that may take account not only of legal issues, but also of personal, commercial, psychological, and other considerations. Communication and negotiation skills, understanding of conflict psychology, and knowledge of a particular sector, such as construction or banking, are therefore valued.
218. A mediator is expressly prohibited from providing either party with legal, advisory, or other assistance (article 10(3) of the Law). The mediator's task is to organize the process rather than advise on the merits. Where the parties require legal expertise, the mediator recommends that they consult an appropriate specialist, such as a lawyer or advocate. This is also reflected in section 4 of the Code of Ethics.

(c) What requirements must a mediator satisfy to participate in court proceedings, and may the parties or the court impose additional requirements?

219. Kazakh legislation establishes minimum general requirements for mediators participating in court proceedings, including age, education, a training certificate, and the absence of a criminal conviction. Mechanisms nevertheless exist for imposing additional requirements depending on the complexity or category of the dispute or the relevant sector.
220. Additional requirements imposed by the parties, which are the principal mechanism:
- Article 9(8) of the Mediation Law provides that the parties' mediation agreement may establish additional requirements for the mediator. For example, where a dispute concerns complex technical issues in construction, the parties may agree that the mediator must have a relevant engineering or construction qualification and experience in that field.
 - The parties may also establish requirements relating to the length of mediation practice, possession of specialized certificates, such as completion of a Specialized Mediation Course in a particular field, and similar qualifications.
221. Additional requirements imposed by the court:
- Kazakh legislation does not expressly authorize a court to impose additional requirements on a mediator. A court cannot require the parties, on its own initiative, to choose a particular mediator.
 - The court nevertheless plays an important role in overseeing the absence of conflicts of interest. If it becomes aware of circumstances casting doubt on the independence or impartiality of the mediator selected by the parties, it may explain the risk and its possible consequences to them. The final choice of mediator remains with the parties.
 - The court also approves the mediated settlement agreement and may verify whether the mediation procedure, including the identity of the mediator, complied with the law and the rights of third parties.
222. Mediator specialization:
- The training system permits specialization. In addition to the 72-hour General Mediation Course, Specialized Mediation Courses of at least 32 hours in each field are available, including civil, labour, family, and criminal cases, financial and credit relations, and other areas (Annex 2 to the Rules on Mediation Training).
 - Although completion of a specialized course is not a mandatory condition for participating in every court case, it clearly enhances the mediator's qualifications and

may be considered by the parties when selecting a mediator. Mediation organizations indicate each mediator's area of specialization in their registers (article 14(4) of the Law), helping the parties make an informed choice.

223. The law does not impose automatic requirements on a mediator according to the category of court dispute. The principal mechanism is party autonomy: when selecting a mediator, the parties may, and should, take account of the specific features of their dispute and specify additional qualification requirements in the mediation agreement. Registers containing information on mediators' specializations are intended to facilitate that choice.

(d) Is there specialization of mediators by category of case, and how is it regulated?

224. Specialization of mediators by category of case exists and is encouraged in Kazakhstan. It operates at two levels: mandatory professional-training requirements and the provision of information to support the choice of mediator.
225. The Rules on Mediation Training expressly provide for two levels of training after the basic course. The 72-hour General Mediation Course provides the basic knowledge and skills required to begin practice. The Specialized Mediation Course, set out in Annex 2 to the Rules, is intended for "training in a specific field of mediation and improving the qualifications of professional mediators", for example in labour disputes, criminal cases, and financial and credit disputes.
226. The Mediation Law requires mediation organizations, for professional mediators, and akims, for community mediators, to include in their registers "information on the area of mediation in which the mediator specializes" (article 14(3)(4) and article 16(3)(4)). Each mediator must state their specialization when entered in the register. This information is public and accessible to potential users, including individuals, businesses, and courts, allowing them to make an informed choice of the specialist best suited to the dispute.

(e) What is the mediator's procedural role: assistant to the court, independent neutral intermediary, or representative of the procedure?

227. In Kazakhstan, the mediator's procedural role is defined as that of an "independent and neutral intermediary", as reflected in several regulatory instruments:
- The Mediation Law:
 - Article 2 defines mediation as a dispute-resolution procedure conducted "with the assistance of a mediator". Assistance means helping the parties organize the process, not deciding the dispute for them.
 - Article 7 establishes the mediator's independence and impartiality. A mediator is independent of the parties, administrative authorities, and the court, and is autonomous in selecting the means and methods of mediation. The mediator must be impartial, conduct mediation in the interests of both parties, and ensure their equal participation in the procedure.
 - Article 10, on rights and duties, emphasizes the mediator's neutral role: the mediator meets with the parties and receives information, but may not provide legal, advisory, or other assistance to either party. The mediator merely facilitates the exchange of information.
 - The Code of Professional Ethics for Mediators:

- Paragraph 2.3 states: “A mediator acts as an independent and neutral intermediary and does not make decisions on the merits of the dispute.”
 - Paragraph 3.6 states: “Clarity of role. The mediator does not combine the role of mediator with that of lawyer, consultant, or representative.”
 - Section 4, Ethical Prohibitions, expressly prohibits imposing solutions, providing legal advice, and manipulating information.
228. A mediator is not an assistant to the court in the sense of being subordinate to it or carrying out its instructions. Where mediation takes place during court proceedings, the court merely reviews the legality of the final agreement under article 27 of the Law and stays the proceedings for the duration of mediation under article 23. It does not intervene in the mediation itself. Nor is the mediator a “representative of the procedure” as an abstract entity. The mediator safeguards the process only to the extent necessary to secure compliance with its principles, including voluntariness and equality, primarily for the benefit of the parties.

(f) Are the mediator’s rights and duties established in procedural legislation?

229. In Kazakhstan, the mediator’s rights and duties are established at the national level in the Mediation Law. They are further detailed through self-regulation in codes of ethics and the internal standards of mediation organizations.
230. Article 10 of the Law is entitled “Rights and Duties of the Mediator” and provides as follows:
- A mediator is entitled to:
 - hold meetings with all parties together or separately with each party in caucus;
 - receive from the parties such information about the dispute as is necessary to conduct the mediation;
 - inform the public about the mediator’s activities, including the number, duration, and success rate of procedures, while maintaining confidentiality; and
 - refuse to conduct mediation if, in the mediator’s opinion, further efforts will not resolve the dispute, or terminate the mediation with the parties’ consent.
 - A mediator must:
 - act only with the parties’ consent;
 - before the mediation begins, explain its purposes, principles, and procedure, the parties’ rights and duties, and the legal consequences of concluding an agreement;
 - assist the parties in the orderly exchange of documents, information, and communications;
 - inform the parties about the mediator’s professional experience and competence;
 - terminate the mediation if a personal interest, or conflict of interest, arises that may affect the mediator’s impartiality or independence, or if other circumstances preclude the mediator’s participation; and
 - regularly improve their professional qualifications through continuing professional development.
 - Prohibitions:

- A mediator may not provide legal, advisory, or other assistance to either party (article 10(3) of the Mediation Law).
 - A mediator must maintain confidentiality under article 8 of the Law and impartiality under article 7.
231. The rights and duties established by the Law are detailed and supplemented by the internal instruments of mediation organizations, including the Code of Professional Ethics for Mediators of the Association of Mediators of the Republic of Kazakhstan. These instruments require mediators, among other things, to avoid and disclose conflicts of interest, maintain their qualifications, preserve the confidentiality of caucuses, and refrain from accepting gifts or other benefits capable of casting doubt on their neutrality.
232. Through its authorized body, the State approves training rules and maintains a register of mediation organizations under article 8-1 of the Law but does not individually accredit mediators. Mediation organizations perform that function by maintaining their own registers of professional mediators. Akims also maintain registers of community mediators under article 16, but do not establish rights or duties for them different from those provided by law.

(g) For what may a mediator be held liable?

233. A mediator in Kazakhstan may be held liable for breaches of mediation legislation, the terms of the mediation agreement, and the rules of professional ethics.
234. Liability towards participants in the procedure, namely the parties to mediation, is the principal form of liability and is governed by the Mediation Law and the mediation agreement. A mediator is liable for loss caused by their actions under the general rules of civil law. Article 21(8) of the Mediation Law requires the mediation agreement to specify, as an essential term, “the grounds and extent of liability of the mediator or mediators ... for acts or omissions that caused damage or loss to the parties to the mediation”. The parties and the mediator determine in the agreement the conduct for which the mediator is liable, such as disclosure of confidential information or a serious organizational error causing negotiations to fail, and the extent of that liability. If the agreement does not specify these matters, the general provisions of the Civil Code on compensation for harm apply. The mediator is not liable for the substance of the decision made by the parties. In addition, article 8(3) of the Mediation Law provides for liability, including potential criminal liability, of mediation participants, including the mediator, for breaches of confidentiality.
235. Disciplinary and corporate liability towards a mediation organization applies for breaches of professional standards and ethical rules. Section 5.3 of the Code of Professional Ethics of the Association of Mediators of the Republic of Kazakhstan provides for the following disciplinary measures:
- a warning;
 - mandatory training;
 - suspension of mediator status for up to six months under article 14 of the Law; and
 - expulsion from the association, which in practice prevents a professional mediator from continuing to practise because membership of an organization is mandatory for professional mediators.

(h) May a mediator voluntarily or compulsorily terminate an accepted appointment to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

236. A mediator may terminate participation in mediation. The Mediation Law provides both voluntary and mandatory grounds for terminating the appointment.
237. A mediator may refuse to conduct mediation if, in the mediator's opinion, further efforts will not resolve the dispute or conflict between the parties (article 10(1)(3) of the Law). The mediator may also terminate the mediation with the parties' written consent under the same provision.
238. A mediator must terminate the mediation, or withdraw, where a conflict between the mediator's personal interests and duties may affect impartiality or independence (article 10(2)(5) of the Law). This requirement is also reflected in paragraphs 2.3 and 3.3 of the Code of Ethics. The mediator must also terminate the mediation where other circumstances preclude participation or require termination. One example is where it becomes apparent that the parties are using the procedure for unlawful purposes under paragraph 3.6 of the Code of Ethics.
239. Termination of the appointment may have several consequences:
- for the participants in the procedure, namely the parties:
 - the mediation terminates under article 26 of the Law. The parties return to the position they occupied before the procedure began. If the case was pending before a court, the court proceedings resume;
 - the parties bear the costs incurred in connection with the mediation up to the date of termination, unless the mediation agreement provides otherwise, for example by providing for a partial refund of the fee; and
 - if the mediator withdraws because the dispute cannot be resolved, the parties may engage another mediator or return to court proceedings;
 - for the court, where mediation took place during proceedings:
 - the parties must promptly send the court written notice of termination of the mediation, specifying the grounds, under article 23(4)(2) and article 24(6)(2) of the Law; and
 - on receipt of the notice, the court resumes the proceedings and continues considering the case in an ordinary manner;
 - for the mediator:
 - where the mediator voluntarily withdraws without good reason unrelated to impartiality or the impossibility of resolving the dispute, the mediator may lose entitlement to remuneration for work performed and may be required to compensate the parties for loss if the withdrawal was unjustified and contrary to the agreement;
 - where withdrawal results from circumstances preventing impartiality, namely a conflict of interest, the mediator must refund the sums paid by the parties under article 22 of the Law;
 - an unjustified withdrawal from an appointment, particularly where it damages the reputation of mediation, may give rise to a complaint to the mediation organization's

Ethics Committee and disciplinary measures up to expulsion from the organization under section 5.3 of the Code of Ethics; and

- repeated withdrawals may adversely affect the mediator's reputation and demand for their services.

(i) How, and by whom, is the mediator's remuneration paid?

240. The arrangements for paying a mediator in Kazakhstan depend on whether the mediator is a professional or community mediator and are governed by article 22 of the Mediation Law and the mediation agreement.
241. Generally, unless the parties agree otherwise, the costs of professional mediation, including the mediator's remuneration, are borne by the parties jointly in equal shares under article 22(4). This is a default rule, and the parties may agree on any other allocation in the mediation agreement. The amount of remuneration is agreed by the parties and the mediator or mediators before the mediation begins under article 22(3). If the mediator withdraws because of circumstances preventing impartiality, namely a conflict of interest, the mediator must refund the sums paid by the parties under article 22(5).
242. Community mediators act without remuneration under article 22(6) of the Law. They are, however, reimbursed for expenses incurred in connection with mediation, such as travel to the place of mediation, accommodation, and meals, under article 21(2)(5) and article 22(6). The reimbursement arrangements must also be specified in the mediation agreement.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties move to mediation?

243. Mediation may be used before an application is made to court under article 20(2) of the Law. It is then an entirely independent procedure unconnected with court proceedings. If the parties reach an agreement, they may perform it immediately or apply to the court for approval where they require a guarantee of compulsory enforcement.
244. Mediation may be used after court proceedings have begun under article 20(2) and article 23 of the Law, and at the stage of enforcement of a judicial act under article 25-1. In the latter case, the parties may conclude a mediation agreement even after the judgment has entered into force and has been transferred to enforcement officers. The agreement stays enforcement proceedings for up to 30 days. If the parties reach a settlement, they submit it to the court for approval, and enforcement proceedings are terminated.
245. To move to mediation during court proceedings, the parties must make an appropriate application. If the court finds the application well founded, it issues an order staying the proceedings because the parties have concluded a mediation agreement under article 23(3) of the Law. The proceedings are then stayed for the period allocated to mediation.

(b) May mediation be used after a dispute has been referred to a court?

246. Yes. Mediation after a dispute has been referred to a court is not only permitted but widely used in Kazakhstan (see above).

(c) Must a judge propose mediation to the parties or refer them to mediation upon a party's application or on the judge's own initiative? If so, at what stage and in what procedural form? May an order directing mediation be appealed?

247. A judge in Kazakhstan must facilitate reconciliation between the parties and explain the possibility of using mediation. The procedure nevertheless has certain specific features.
248. The law imposes a general duty on the court to take measures to reconcile the parties at every stage of the proceedings. The court is not, however, required in every case to compel the parties to attend a particular mediator. Its role is to inform them of the possibilities for amicable settlement.
249. If one party applies for mediation and obtains the other party's consent, the court must respond procedurally by verifying that an agreement exists and issuing an order staying the proceedings. Where the conditions are satisfied, this is a duty rather than a discretion.
250. Once satisfied that the application comes from the parties and that the agreement has been properly executed, the court issues an order staying the proceedings because the parties have agreed to mediation under article 23(3) of the Mediation Law.

(d) Does an agreement to mediate stay the court proceedings, and, if so, automatically or only upon a party's application? Does it interrupt the limitation period?

251. Where the parties conclude an agreement to mediate during court proceedings, the proceedings are stayed, but not automatically: a corresponding expression of the parties' intention and a court order are required under article 22(3) of the Law. The limitation period is also suspended.

(e) Are there special requirements for mediation connected with a court dispute?

252. The Mediation Law and procedural legislation establish several special requirements for mediation conducted in connection with a court dispute, or court-annexed mediation, distinguishing it from pre-trial mediation.
253. Time limits under article 23 of the Law:
- Mediation in a dispute pending before a court must be completed no later than 30 calendar days after the mediation agreement is concluded.
 - Where necessary, the parties may extend that period by no more than a further 30 calendar days, so the maximum overall period for court-annexed mediation is 60 days. By comparison, pre-trial mediation is also recommended to be completed within 30 days but may be extended by agreement of the parties without restrictions other than those stated in the agreement.
 - The parties must send the court a joint written notice of any extension.
254. Duty to notify the court under article 23(4) of the Law:
- When court-annexed mediation terminates, the parties must promptly provide the court with the relevant information.
 - If mediation succeeds, the parties send the settlement agreement to the court for approval.
 - If mediation fails or a party withdraws, the parties send the court written notice of termination specifying one of the grounds provided for by article 26 of the Law.

255. Court approval of the agreement under article 27(5) of the Law:
- A settlement agreement reached during court proceedings must be sent to the judge promptly.
 - The court must approve it in accordance with the Civil Procedure Code or the Administrative Procedural and Process-Related Code. Without court approval, the agreement has no procedural effect, such as termination of the case, and cannot be enforced by enforcement officers.
 - A pre-trial mediated settlement agreement, by contrast, is a transaction performed voluntarily; compulsory enforcement is possible only after obtaining a court order or bringing a court claim.

256. When the court approves a mediated settlement agreement, the court fee paid must be refunded to the payer under article 27(5) of the Law.

(f) Must the mediator inform the court that mediation is taking place or of its results, apart from the final agreement?

257. The mediator is not required, and is in fact not permitted, to inform the court that mediation is taking place or of any interim results. The law places that duty directly on the parties.
258. The only information originating from the mediator that may reach the court concerns a settlement agreement signed by the parties and the mediator. Even then, the parties, not the mediator, submit the agreement to the court. The mediator signs it only as confirmation that it was reached in the procedure and reflects the parties' intentions under article 27(2) of the Law.

(g) Is the mediator prohibited from expressing evaluative opinions, providing legal advice, or proposing possible solutions to the dispute?

259. A mediator is expressly prohibited from providing legal advice or legal assistance. Article 10(3) of the Mediation Law states that "a mediator may not provide either party with legal, advisory, or other assistance". Section 4 of the Code of Ethics also prohibits legal advice and requires the mediator, where necessary, to recommend that a party consult a specialist, such as a lawyer or advocate. A mediator must not replace an advocate.
260. A mediator is also prohibited from deciding the dispute on the merits or imposing a ready-made solution on the parties under paragraph 2.3 and section 4, "Imposition of a Solution", of the Code of Ethics.
261. A mediator may propose possible solutions to the parties. Paragraph 3.1 of the Code of Ethics refers to "support for free choice", which does not exclude the mediator from making suggestions.

(h) How are the general principles of mediation implemented and safeguarded when a mediator participates while a case is pending before a court?

262. A mediator's participation while a case is before a court does not displace or diminish the general principles of mediation. On the contrary, they are safeguarded with particular care because the procedure operates within formal court proceedings. Kazakh legislation provides mechanisms to preserve and implement those principles.
263. Voluntariness. A judge may invite the parties to consider mediation but may not compel them to mediate under article 20(3) of the Law. The parties may move to mediation only by

mutual and voluntary consent expressed in an agreement to mediate. Either party may withdraw at any time without giving reasons under article 5(2) and article 26(3)–(4). On receiving notice that mediation has terminated, the court must resume the proceedings.

264. Independence and impartiality of the mediator. A mediator engaged in a court dispute remains independent of the court. The court does not intervene in the mediation, direct the mediator, or supervise the mediator's conduct. The mediator must withdraw in the event of a conflict of interest under article 7(2) and article 10(2)(5) of the Law. The parties may reject a mediator if they doubt the mediator's impartiality under article 11(1)(2).
265. Confidentiality. A mediator may not be examined in court about information learned during mediation under article 8(2) of the Law. The parties must not disclose information under article 8(1). The court receives only the outcome from the parties, namely an agreement or notice of termination, and no information about the negotiations. It may not require the mediator to report on the procedure.
266. Equality of the parties. The mediator must ensure equal participation by giving each party the same opportunity to present its position, an equal number of caucuses, and similar procedural opportunities under article 7(2) and section 2.2 of the Code of Ethics. When approving a mediated settlement agreement, the court also verifies that the rights of neither party were infringed when it was concluded, although it does not conduct an in-depth review of the procedure.
267. Non-interference in mediation. Article 7(3) of the Law and paragraph 2.4 of the Code of Ethics prohibit third parties, including the judge, from intervening in mediation. Once the proceedings are stayed, the court takes no procedural steps in the case, allowing the parties and mediator to work free from external pressure.
268. The maximum period for mediation is 60 days (see above).

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Are special mediation rooms provided in courts?

269. Neither the Mediation Law, the procedural codes, nor the analytical literature mentions a duty for courts to provide dedicated mediation rooms, suggesting that no such statutory duty exists. In practice, however, courts, particularly larger courts in Almaty, Astana, and regional centres where court-annexed mediation is well developed, may make premises available. These are often reconciliation offices or rooms allocated for mediators' work.

(b) Are there approved regulations or rules for court-annexed mediation?

270. Kazakhstan has approved instruments establishing rules and procedures for mediation, including mediation conducted during court proceedings.
271. Legislative level:
 - The Mediation Law is the principal regulatory instrument. It establishes the general principles, procedure, and methods of mediation under article 17; its place and time under article 18; language under article 19; conditions under article 20; the form and content of the mediation agreement under article 21; and the settlement agreement under article 27. Article 23 specifically regulates mediation in disputes pending before a court, including time limits, notice, and the stay of proceedings.

- The procedural codes, namely the Civil Procedure Code and the Administrative Procedural and Process-Related Code, contain chapters on conciliation procedures establishing the procedural arrangements for moving to mediation, staying proceedings, and approving settlement and mediated settlement agreements. They provide the procedural framework.
272. Mediation-organization level, or self-regulation. Article 17(2) of the Law provides that, with the parties' consent, mediation may be conducted under procedural rules approved by mediation organizations. Such organizations develop professional rules and codes of ethics that apply to individual procedures with the parties' consent.
- (c) What is the maximum duration of mediation conducted during court proceedings? May the court extend it?**
273. Article 23 of the Mediation Law sets the maximum duration of court-annexed mediation in Kazakhstan. The overall maximum period for mediation in disputes pending before a court is 60 calendar days, consisting of two periods:
- As a general rule, mediation must be completed no later than 30 calendar days after the mediation agreement is concluded under article 23(2) of the Law.
 - Where necessary, the period may be extended by mutual agreement of the parties, but by no more than 30 calendar days under article 23(2).
274. These time limits apply to mediation in civil and administrative proceedings. In criminal proceedings, the time limits are determined by the periods for pre-trial and court proceedings established by the Criminal Procedure Code of the Republic of Kazakhstan under article 24(4) of the Law. Particular rules may apply, but the general principle remains that mediation must fit within the procedural time limits for the investigation or trial of the case.

8. Mediated Settlement Agreements and Their Enforcement

(d) What is the legal status of a mediated settlement agreement? Is it a transaction, and does it become a judicial act after court approval?

275. The legal status of a mediated settlement agreement, termed in the Law an "agreement on the settlement of a dispute (conflict)", depends on whether it was concluded before proceedings were commenced, as an out-of-court agreement, or during court proceedings.
276. An out-of-court mediated settlement agreement concluded before proceedings is a civil-law transaction under article 27(4) of the Mediation Law. If it is not performed, a party cannot simply demand its compulsory enforcement. The party must bring a claim for specific performance or damages or, where permitted by law, obtain a court order. The court treats the agreement as an ordinary contract.
277. A mediated settlement agreement concluded during proceedings and approved by the court becomes an integral part of the judicial act and has all the attributes of a judgment.
- (e) Must the court approve a mediated settlement agreement as a court settlement if it does not contravene the law, or does the court have discretion?**
278. In Kazakhstan, the court must approve a mediated settlement agreement if it does not contravene the law or infringe the rights and legitimate interests of other persons. This is a statutory duty intended to support conciliation procedures, not judicial discretion.

(f) On what grounds may the court refuse to approve an agreement? Does the court review its substantive legality?

279. The grounds for refusing approval follow from the statutory requirements governing the agreement's content and conclusion. The court reviews its substantive legality within defined limits. The agreement cannot, for example, declare transactions invalid because only a court has that power; it must not infringe the rights and legitimate interests of others; and it must generally accord with the nature of mediation and be capable of enforcement.

(g) How is the agreement compulsorily enforced, for example through a notarial writ of execution, simplified court approval, or a damages claim? What may follow from non-performance, including court fines?

280. The method of compulsory enforcement and the consequences of non-performance depend directly on whether the mediated settlement agreement is judicial (i.e. court-approved) or out-of-court.
281. A judicial mediated settlement agreement is enforced under the ordinary procedure applicable to judgments: a party obtains a writ of execution and submits it to the competent authorities or organizations.
282. An out-of-court mediated settlement agreement may be enforced by bringing a claim for specific performance and/or damages or by applying for a court order.

9. Incentives and Barriers to the Use of Mediation in Court

(a) Are the costs of pre-trial mediation treated as litigation costs and recoverable from the losing party?

283. Neither the Mediation Law, the procedural codes, nor the analytical literature contains a rule expressly treating the costs of pre-trial mediation as litigation costs to be allocated between the parties in subsequent court proceedings.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

284. No. Kazakh legislation does not impose direct financial sanctions, such as a fine or penalty, for a party's unreasonable refusal to participate in mediation. This may be explained by reference to the principle of voluntariness established by the Law.

(c) Are there tax or court-fee benefits for parties that use mediation?

285. The only statutory benefit in Kazakhstan is a refund of the court fee to the payer where the parties conclude, and the court approves, a mediated settlement agreement under article 27(5) of the Mediation Law.

(d) What are the principal organizational, economic, and subjective barriers identified by practitioners?

286. Practitioners, including judges, mediators, and lawyers, identify several barriers that continue to restrain the development of mediation in Kazakhstan despite positive trends.
287. Organizational barriers:
- Inconsistent practice and "formal mediation". There is a risk of a formalistic approach in which mediation is treated merely as a box-ticking "stage before court", rather than a

complete dispute-resolution process. This reduces procedural quality and produces fragile agreements that may not be performed.

- Insufficient standardization of training and supervision. Despite existing training programmes, beginning mediators still need more extensive practical work, case analysis, and continuing professional supervision to reduce errors.
- Lack of dedicated court infrastructure. Although courts are not required to provide it, the absence of specially equipped mediation premises in some courts may cause practical inconvenience.
- Legislative deficiencies in particular areas. Gaps are reported concerning amendments to approved agreements, conditions precedent, and third parties' right to participate in court-annexed mediation.

288. Economic barriers:

- Financial institutions' unwillingness to make concessions. Banks, microfinance organizations, and debt-collection agencies are often unwilling to negotiate or make concessions, such as reducing penalties or allowing deferral or instalment payments, although doing so may increase the prospects of debt recovery.
- Lawyers' dependence on prolonged proceedings. Some lawyers who have already received remuneration are reportedly not interested in a swift resolution through mediation because it would reduce income from lengthy court representation.

289. Subjective barriers relating to attitudes and awareness:

- Insufficient public awareness and confidence.
- Excessive conservatism and distrust of the relatively new institution among potential users, particularly in-house lawyers and managers.
- The parties' unwillingness to compromise: high levels of conflict and intransigence lead parties to prefer "fighting to the end" in court rather than seeking a mutually beneficial solution.

10. Other Issues

(a) Are alternative forms of conciliation established by law, such as judicial conciliation or negotiations involving lawyers? How do they relate to mediation?

290. Kazakh legislation, particularly the Civil Procedure Code, provides several conciliation procedures that parties may use. Mediation is one of them, but not the only one:

- A court settlement is a traditional conciliation procedure in civil proceedings. The parties, independently or with the court's assistance, agree on terms for resolving the dispute, and the court approves the settlement. Unlike mediation, it does not necessarily involve an independent intermediary. It may result from direct negotiations between the parties or the court's assistance.
- An agreement resolving a dispute through a participatory procedure is reached with the involvement of advocates for both parties. The advocates act as representatives who help their clients identify a mutually acceptable solution. No mediator participates.

- Judicial conciliation involving a judge is not mediation because the judge is not an independent intermediary in the same sense as a mediator: the judge is already involved in the proceedings and exercises public authority.
 - Direct negotiations between the parties outside any special procedure.
291. All these procedures coexist, and the parties may select or combine them. The legislation encourages every form of conciliation, as reflected in the high usage figures: in 2023, of 79,937 cases discontinued following conciliation, 63,926 ended through mediation, 8,314 through court settlements, and 238 through participatory procedures.

(b) How has the country's historical context influenced the contemporary perception and institutionalization of mediation?

292. Kazakhstan's historical context has had a significant and positive influence on the modern perception and institutionalization of mediation. Mediation fits naturally within the cultural traditions of the Kazakh people, facilitating its acceptance and development.
293. Traditional Kazakh procedural law contained established concepts and practices of reconciliation: *kelisim aitu*, meaning an expression of agreement; *bitim aitu*, reconciliation; *toqtam*, a decision or determination; and *zharasu*, reconciliation or amicable settlement. These traditions created favourable conditions for the reception of modern mediation. For the public, turning to a respected neutral person to resolve a dispute is not alien, but a return to cultural roots.
294. Documents of the Association of Mediators and analytical publications frequently emphasize this cultural dimension. Mediation is presented not merely as an imported Western technique, but as an institution with deep historical roots in Kazakh culture. This strengthens confidence in mediation and facilitates its integration into public consciousness.

(c) What are the stated public-policy objectives for developing mediation: reducing court caseloads, saving the parties' resources, or enhancing international standing?

295. According to the materials reviewed, Kazakhstan's stated public-policy objectives for developing mediation are comprehensive and encompass all three aspects identified above. They may be divided into several interconnected levels.
296. Reducing court caseloads and improving the administration of justice is one of the most pragmatic and frequently cited objectives. Mediation is regarded as a means of reducing that burden by redirecting a substantial proportion of disputes to out-of-court or pre-trial settlement.
297. The development of mediation at the Astana International Financial Centre, where 77% of commercial disputes are resolved through mediation, directly supports the attraction of foreign investment and Kazakhstan's image as a country with a modern, predictable, and business-friendly legal system.
298. Participation in international conventions, such as the Singapore Convention on Mediation, and reliance in the Association's Code of Ethics on international standards, including the Model Standards of Conduct for Mediators and the European Code of Conduct for Mediators, also demonstrate an intention to apply best practices.

(d) May a judge act as a mediator?

299. A serving judge in Kazakhstan may not act as an independent mediator in the sense understood in traditional out-of-court mediation.

300. A retired judge may act as a professional mediator. Article 9(4) of the Mediation Law expressly includes “retired judges entered in the register of retired judges carrying out professional mediation activities” among the persons entitled to practise as professional mediators.

(e) May mediation form part of the legal-aid system? How is mediators’ work funded in that case?

301. Mediation in Kazakhstan may form part of the legal-aid system, but in a specific form through the institution of community mediators. The arrangements for funding their work differ from the remuneration of professional mediators.
302. Articles 9 and 15 of the Mediation Law provide for mediators acting on a community basis. This is the form of free mediation. Community mediators are elected by the local community from respected people aged over 40 and are entered in a register by the akim.
303. This form of mediation is available to broad sections of the population within the relevant administrative-territorial unit. It expands access to mediation for socially vulnerable groups and people unable to pay for a professional mediator. Paragraph 3.9 of the Code of Ethics also refers to promoting “pro bono practice for socially vulnerable groups”.
304. Community mediators may resolve disputes referred to by the court and disputes at the pre-trial stage. Their role is particularly important in rural areas and small towns.
305. Article 22(6) of the Mediation Law expressly provides that “community mediators act without remuneration”. They therefore receive no payment for their work from the parties or the State. The same provision nevertheless states that community mediators are to be “reimbursed for expenses incurred in connection with mediation”. Such expenses include travel, accommodation, and meals under article 21(2)(5). Reimbursement arrangements must be specified in the mediation agreement; funding may come from the parties or, under a municipal programme, from a local budget, although this is not addressed directly in the legislation. Although the legislation contains no express budgetary provision, akimats may reasonably be expected to include such expenditure in programmes supporting community mediators.
306. Kazakhstan has a State-guaranteed legal-aid system under which advocates’ work is funded from the budget when they provide defence in criminal cases and representation in certain categories of civil cases. No comparable direct budgetary payment is provided for professional or community mediators.

(f) How are online platforms and digitalization changing traditional mediation practice?

307. Digitalization and online platforms are being actively introduced into mediation practice in Kazakhstan and, according to the available materials, are significantly changing it by making mediation more accessible, flexible, and effective. The changes affect both legal regulation and practical activity.
308. Article 17 of the Mediation Law expressly provides that, with the parties’ mutual consent, mediation may be conducted by videoconference, through electronic communications, or by other means using information and communication technologies.
309. Article 18(3) permits participants to take part in the procedure through technical means of communication and to authenticate a settlement agreement with an electronic digital signature.

- 310. Article 21(1) permits the parties to exchange signed digital copies of the mediation agreement by email.
- 311. Online mediation is reported to be less confrontational because the mediator speaks separately with each party and then conveys the terms to the other party [...] in a more measured and moderate form. The absence of direct visual contact when difficult messages are communicated may reduce emotional intensity.

IV. Singapore

1. Principal Legislation and Other Instruments. Terms and Abbreviations

- Singapore Convention – Singapore Convention on Mediation Act 2020;
- Mediation Act – Mediation Act 2017;
- Singapore procedural rules – Rules of Court 2021;
- Commentary on the Singapore procedural rules – Rules of Court Overview;
- Practice guidance – Practice Directions;
- SIMI – Singapore International Mediation Institute;
- SMC – Singapore Mediation Centre;
- Code of Ethics – SIMI Code of Conduct.

2. Concept and Principles of Mediation

(a) Understanding of Mediation in the Jurisdiction Examined

312. Mediation is a process in which a neutral person, the mediator, facilitates negotiations between parties to a dispute to help them reach an agreement under section 3 of the Mediation Act. It is strictly a process of facilitating negotiations.
313. Importantly, in Singapore the term ADR⁶ is understood not only as “alternative”, but also as “appropriate” or “amicable” dispute resolution, and mediation is regarded as one of the principal tools for most civil cases under Order 5 of the Rules of Court 2021.
314. SIMI presents mediation as a highly professional service requiring specialist competence distinct from judicial or advocacy skills.

(b) Are the principles of voluntariness, confidentiality, and neutrality established by law?

315. They are regulated in considerable detail.
- Confidentiality: see the following subsection.
 - A model of “encouraged” voluntariness. The mediator cannot impose a solution; only the parties decide whether to conclude an agreement. The mediator ensures that any agreement is reached without coercion under the SIMI Code of Conduct. Even where mediation is mandatory, the parties retain the right to terminate it at any time under Order 5 of the Rules of Court 2021.
 - Neutrality means the absence of a conflict of interest. A mediator must disclose any relationship with the parties.
 - Impartiality requires the mediator to act without bias towards either party throughout the process.

⁶ ADR (alternative dispute resolution) is an umbrella term widely used in foreign sources to denote any method of resolving a dispute between parties without recourse to judicial authorities.

316. Section 2 of the SIMI Code of Conduct provides that, if a conflict of interest arises during the procedure, the mediator must disclose it to the parties and either withdraw or obtain their written consent to continue.
317. Rule 1 of Order 5 of the Rules of Court 2021 introduced a further quasi-principle: a duty to consider ADR. This does not remove the voluntary nature of mediation for the parties but requires them and their lawyers to make a genuine attempt to engage in the process.

(c) What are the limits of confidentiality? May negotiations be relied upon in court?

318. Confidentiality is a statutory privilege under sections 9–11 of the Mediation Act.
- No “mediation communication” may be disclosed in court or before another authority.
 - The mediator has testimonial immunity and cannot be called a witness in a matter that the mediator mediated.
 - Disclosure is permitted only in exceptional circumstances, including preventing an offence, protecting children, or where all parties give written consent.
319. Confidentiality is a shared duty of the mediator and the parties. The mediator must explain the duty to the parties and their lawyers and include it in the agreement to mediate under the SIMI Code of Conduct.
320. Under Order 21 of the Rules of Court 2021, lawyers must inform the court that mediation has commenced so that the proceedings may be stayed. Importantly, they must also report the general outcome of mediation for the later allocation of legal costs.
321. Section 10 of the Mediation Act prohibits the use as evidence of any information obtained during mediation.
322. Under section 11 of the Mediation Act, such information may be relied upon only for the purpose of enforcing or challenging the agreement reached, for example to prove that pressure was exerted.
323. “Mediation communication” means any interaction between the mediator and the parties during negotiations, including words, gestures, drafts, proposals, and admissions, under section 2 of the Mediation Act.

(d) Is legality established as a condition for a mediated settlement agreement?

324. There is no principle of legality in the traditional sense. The mediator must nevertheless ensure compliance with the “law” of mediation by conducting the process in accordance with SIMI’s standards of due process under section 3.1 of the Code of Conduct.
325. Under section 3.3.4 of the Code of Conduct, if the mediator believes that an agreement reached by the parties is illegal or unenforceable, the mediator must warn them. If the parties continue to insist on the agreement, the mediator must withdraw from or terminate the process under section 3.3.5.
326. Mediation is usually conducted with lawyers present. Under rule 13 of the Legal Profession (Professional Conduct) Rules 2015, which establish ethical and professional standards for lawyers, a lawyer must advise the client about the legal consequences and ensure compliance with the law.
327. The court conducts the principal legality review when approving the agreement under section 12 of the Mediation Act.

328. Legality is also important under section 7 of the Singapore Convention when a mediated settlement agreement is enforced abroad. A court may refuse enforcement if the agreement is contrary to public policy.

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What types of disputes are covered, including civil, commercial, labour, and administrative disputes?

329. Mediation covers almost every type of legal relationship, subject to the particular features of individual disputes:
- Civil and commercial disputes. These are the principal category governed by the Mediation Act and the Supreme Court of Singapore's procedural framework. Under rule 1 of Order 5 of the Rules of Court 2021, the parties must consider mediation in every civil dispute. An unreasonable refusal may significantly affect the allocation of legal costs.
 - Labour disputes. Mediation is administered by the specialized Tripartite Alliance for Dispute Management (TADM). For most labour disputes, recourse to TADM is mandatory before an application may be made to the Employment Claims Tribunals under section 3 of the Employment Claims Act.
 - Family disputes. Mediation is integrated into the work of the Family Justice Courts. Where minor children under 21 are involved, mediation and/or counselling is mandatory under section 50 of the Women's Charter.
 - Community and neighbour disputes. The court may compel the parties to mediate disputes between neighbours involving noise, refuse, and other neighbourhood conflicts under section 13 of the Community Disputes Resolution Act.
 - Administrative disputes involving public authorities. Mediation is possible but less common. Singapore public authorities nevertheless promote mediation through the Whole-of-Government ADR initiative, including by inserting mediation clauses in public contracts.
330. Criminal mediation is possible only in private prosecution matters or for less serious offences involving a single victim under the Criminal Procedure Code 2010. It may take place before sentencing, usually on the initiative of the prosecutor or the court. Mediation does not negate the offence, but an offender's attempt to resolve the dispute and compensate the victim may be treated as a mitigating factor.

(b) Are there exclusions from the scope of mediation, for example disputes involving public interests?

331. Yes. Certain disputes are regarded as unsuitable for either arbitration or mediation:
- serious criminal offences;
 - public-law and constitutional matters, including challenges to governmental legislation and alleged violations of constitutional rights, which fall within the exclusive jurisdiction of the High Court of Singapore under Order 24 of the Rules of Court 2021;
 - status proceedings in rem, including paternity, legal incapacity, the validity of marriage, and bankruptcy;

- applications for urgent interim relief, including injunctions, asset-freezing orders, and other provisional measures under Order 13 of the Rules of Court 2021; and
- protection of victims of domestic violence through protection orders under Part VII of the Women's Charter.

4. The Role of Judicial Practice and the Judiciary's Approach

(a) What are the general statistics on the use of mediation in court cases?

332. The annual report for financial year 2022–2023 states that the Singapore Courts Centre for Dispute Resolution (SCCDR) handled thousands of civil cases, the overwhelming majority of which ended in settlement. The mediation success rate has remained consistently between 85% and 90%.⁷
333. Since its establishment, the Singapore Mediation Centre has mediated more than 6,300 cases with an aggregate dispute value exceeding \$14 billion.
334. Approximately 70% of SMC cases settle within 24 hours, in a single mediation session, and more than 80% settle within several days.⁸

(b) Are there any guiding interpretations by the highest courts, precedents, or similar authorities concerning mediation?

335. Singapore is a common-law jurisdiction, and judicial guidance is therefore of central importance:
- Practice Directions are the principal instruments followed by judges and lawyers:
 - The Supreme Court Practice Directions 2021 contain detailed rules on how the parties should propose amicable dispute-resolution methods and how the court assesses their conduct.⁹
 - The State Courts Practice Directions 2021 establish standards for mediation in the State Courts.
 - Specific judicial precedents include:
 - *Myung Sung (Singapore) Pte Ltd v Kookmin Bank* (2021).
336. In *Myung Sung (Singapore) Pte Ltd v Kookmin Bank* (2021), the court affirmed the “sacrosanct” nature of mediation confidentiality. In *Gay Choon Ing v Loh Sze Ti Terence Peter* (2009), it held that the parties could not use documents obtained during mediation, including draft agreements, in subsequent proceedings unless an exception under the Mediation Act applied.
337. In *Gay Choon Ing v Loh Sze Ti Terence Peter* (2009), the court held that a mediated settlement agreement is a fully binding contract. It cannot be rescinded merely because one party has “changed its mind”. Rescission requires established common-law grounds such as fraud, duress, or a clear mistake of law.

⁷ SG Courts Annual Report 2024. (2025). Singapore Courts. [URL](#)

⁸ Singapore Mediation Centre. (n.d.). *About Singapore Mediation Centre*. [URL](#)

⁹ The Supreme Court of Singapore. Supreme Court Practice Directions 2021. [URL](#)

(c) What is judges' attitude towards mediation? What concerns or difficulties do they identify?

338. Judges in Singapore view mediation not as a means of “getting rid of a case”, but as a means of achieving a better-quality outcome.
339. One concern is that excessive procedural pressure, including sanctions for refusing amicable settlement, may turn mediation into an empty formality.
340. Another difficulty is maintaining the “confidentiality wall” when judges must respond to bad faith conduct during mediation without knowing the details of the negotiations.
341. There is also concern that referring cases to external mediators could reduce judicial control over the quality of justice. This explains the courts' strong emphasis on SIMI accreditation.¹⁰

(d) How active is the mediation community in cooperating with the courts?

342. Singapore's mediation community operates through a model of deep institutional integration.
343. The principal forms of cooperation include:
- The Volunteer Mediator Programme. Courts engage experienced lawyers and sector specialists accredited by SMC or SIMI to conduct mediation in civil and family cases free of charge or for nominal remuneration.¹¹
 - SIMI cooperates with the courts on accreditation. Courts accept the quality of mediation only where the mediator satisfies SIMI standards.

5. Legal Status, Role, and Duties of the Mediator in Court Proceedings

(a) General Requirements for Mediators

344. Citizenship is irrelevant, and foreign mediators are actively engaged in Singapore. There is no mandatory-membership requirement, but SIMI accreditation is necessary to work with the courts and major mediation centres.
345. A mediator may practise professionally for remuneration or as an unpaid volunteer, for example at Community Mediation Centres. Mediators may be advocates, academics, professionals from non-legal fields, or retired judges under section 2.2 of the SIMI Code of Conduct.
346. A university law degree is not required; a degree in any field is acceptable. Completion of a specialized course approved by SIMI is, however, required.
347. When a person applies to SIMI, the applicant is carefully screened for criminal convictions, disciplinary measures, and other reputational matters. Any breach of the SIMI Code of Conduct may result in loss of accreditation. Mediators must also demonstrate their skills annually and complete continuing professional development courses.

¹⁰ For further details, see Alexander, N., Chong, S. Y. (2020). Mediation and appropriate dispute resolution. *Singapore Academy of Law Annual Review of Singapore Cases*, 20, p. 614–641. [URL](#)

¹¹ For further details on the Volunteer Mediator Programme, see *Media Release: Singapore Courts Honour Dedicated Court Volunteers for Boosting Access to Justice*. (2025). Singapore Courts. [URL](#)

348. SIMI charges annual fees ranging from SGD 75 to SGD 200.
349. Additional registration fees may also be payable to join mediation centres.
350. A mediator cannot simultaneously act as an advocate in the same dispute under section 2 of the SIMI Code of Conduct.
351. SIMI has a tiered system of mediator status in Singapore:¹²
- Level 1: training and successful completion of an assessment;
 - Level 2: at least 10 mediations or 50 hours of mediation, together with supervised practice under a mentor or co-mediator;
 - Level 3: at least 30 mediations or 150 hours of mediation; and
 - SIMI Certified Mediator: the highest level, requiring more than 80 mediations and professional recognition.
352. The amount of the fee depends on the mediator's level.
- (b) Must a mediator hold a university law degree, either generally or specifically when participating in court proceedings?**
353. The answer depends on the type of dispute. Several arrangements are possible:
- Court-annexed mediation takes place at the Singapore Courts Centre for Dispute Resolution. Judges acting as mediators there must have legal qualifications because they form part of Singapore's judiciary. External volunteer mediators may also be engaged, but they must have at least 10 years of legal experience and SIMI accreditation.
 - If pre-trial mediation is not prescribed for the case, or the parties have declined it, but the need for mediation becomes apparent after proceedings begin, the judge may suggest either the Singapore Courts Centre for Dispute Resolution or SIMI mediators. The court may recommend qualifications or specialization under rule 3 of Order 5 of the Rules of Court 2021, and a law degree may not be required.
 - When entering into a contract, the parties may themselves determine the qualifications required of a mediator for pre-trial dispute resolution.
354. Where a case subject to mandatory mediation is filed in Singapore, it is first referred to the Singapore Courts Centre for Dispute Resolution. There are two groups of judges: the Settlement Judge, whose sole task is to conduct mediation, and the Trial Judge, the ordinary judge to whom the matter passes if mediation fails. The Settlement Judge complies with all mediation rules and informs the Trial Judge only of the status of mediation, namely whether it took place and whether it succeeded.
355. Such mediation is usually free for the parties because it forms part of the public court process.¹³

¹² For further details on SIMI accreditation, mediator levels, and fees, see Singapore International Mediation Institute. (n.d.). *SIMI Credentialing scheme*. [URL](#)

¹³ For further details on the public system of court-annexed mediation, see *State Courts' Court Dispute Resolution Cluster*. (n.d.). Singapore Courts. [URL](#)

(c) What requirements must a mediator satisfy to participate in court proceedings, and may the parties or the court impose additional requirements?

356. See above.

(d) Is there specialization of mediators by category of case, and how is it regulated?

357. In practice, mediators specialize within particular mediation centres and under the SIMI framework. Specialization may relate both to mediation style, such as facilitative, evaluative, or hybrid mediation, and to the subject matter of disputes.¹⁴

(e) What is the mediator's procedural role: assistant to the court, independent neutral intermediary, or representative of the procedure?

358. The answer depends on the stage and type of mediation (see above). Mediators at the Singapore Courts Centre for Dispute Resolution, including Settlement Judges, effectively form part of the judicial system. They may engage volunteer mediators who temporarily become part of that framework, with remuneration funded from the budget or nominal party fees. Other mediators remain entirely independent of the judicial system.

(f) Are the mediator's rights and duties established in procedural legislation?

359. Singapore has a national accreditation system under which SIMI may accredit mediators who are foreign nationals and practise in Singapore. Mediators may also belong to particular mediation centres.

(g) For what may a mediator be held liable?

360. A mediator's duties are primarily professional and ethical:

- a duty to disclose any conflict of interest under section 2 of the SIMI Code of Conduct;
- a duty of confidentiality under section 9 of the Mediation Act;
- a duty to safeguard party self-determination, meaning that the parties must make decisions voluntarily, under section 3.1 of the SIMI Code of Conduct; and
- a duty to inform the parties about confidentiality, the procedure, and its cost under section 2 of the SIMI Code of Conduct.

361. Mediators benefit from a principle of "protected professionalism", meaning that liability arises only in limited circumstances.

- Liability towards the court:
 - a mediator may be liable for contempt of court or breach of a direct court order, including unlawful disclosure of confidential information, under section 10 of the Mediation Act; and
 - a Settlement Judge is accountable to the judicial administration.
- Liability towards participants in the proceedings:
 - disciplinary liability under SIMI rules, including loss of accreditation; and

¹⁴ For further details on SIMI accreditation, mediator levels, and fees, see Singapore International Mediation Institute. (n.d.). *SIMI Credentialing scheme*. [URL](#)

- civil liability (see below).
- Liability for adverse consequences suffered by the parties is essentially civil liability. It arises only where bad faith on the mediator's part or collusion with one party is proved. An ordinary "mistake" or "poor advice" is protected from liability under section 12 of the Mediation Act. The most severe sanction is disciplinary loss of status, which in Singapore effectively amounts to "professional death".

(h) May a mediator voluntarily or compulsorily terminate an accepted appointment to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

362. A decision to terminate mediation must balance the principle of voluntariness, ethical rules, and statutory requirements:

Voluntary termination at the mediator's discretion:

- the parties have reached an impasse, and no agreement is achievable under section 3.3.5 of the SIMI Code of Conduct;
- the parties are using the procedure in bad faith under the same provision;
- the parties' physical or mental condition prevents the procedure from continuing under the same provision; or
- there is a conflict of interest that cannot be resolved under section 2.1 of the SIMI Code of Conduct.

Mandatory termination under legal or ethical requirements:

- the parties are arranging the commission of an offence, or the final agreement would clearly be unlawful, under section 3.3.5 of the SIMI Code of Conduct;
- there is coercion, violence by one party, or a serious power imbalance; or
- the court directs termination, for example because the stay of proceedings has expired under Order 5 of the Rules of Court 2021.

363. A mediator incurs no direct liability merely for deciding independently to terminate the procedure under section 12 of the Mediation Act but remains entitled to remuneration in accordance with the mediation agreement, usually calculated by reference to hours spent.

364. Court proceedings resume for the parties and the court. If mediation was terminated at the initiative of, or because of bad faith conduct by, one party, that party may be ordered to bear additional legal costs under Order 4 of the Rules of Court 2021.

365. The balance between confidentiality and one party's bad-faith conduct is particularly important when mediation terminates.

366. The following mechanisms may be used to inform the court that one party disrupted or breached the procedure:

- counsel for the party acting in good faith may report the matter, for example where the other party failed to attend or unjustifiably refused to provide necessary documents;
- the mediator may submit a procedural report through SIMI or another mediation centre recording a party's non-attendance or categorical refusal to consider settlement proposals, after which the centre informs the court; or

- section 10(2)(f) of the Mediation Act provides a limited exception allowing disclosure “in the interests of justice”.

367. Under rule 4 of Order 21 of the Rules of Court 2021, the court may take the above circumstances and reports into account.

(i) How, and by whom, is the mediator’s remuneration paid?

368. Mediation funding in Singapore is divided between the public, subsidized sector and the private sector.

- Free and subsidized mediation:¹⁵
 - Court-annexed mediation is entirely free in the Magistrates’ Courts for claims up to \$60,000, apart from the court fee for filing the claim. In the District Courts, for claims between \$60,000 and \$250,000, the parties pay \$250–\$300 per mediation session, significantly below market rates. Settlement Judges conduct the mediation as salaried public officials, and session fees are paid to the State.
 - Mediation of neighbour disputes at Community Mediation Centres under the Community Mediation Centres Act is effectively free, with only a \$5 administrative fee. Most mediators are volunteers who receive modest remuneration from Singapore’s Ministry of Law.
- Private mediation through SIMI or SMC is charged at market rates. The parties pay an administrative fee and the mediator’s fee, which depends on qualifications, dispute complexity, and other factors.¹⁶

369. Free mediation is widely available because Singapore invests in mediation as an important means of reducing court caseloads.

370. Cases before the High Court are high-value matters involving claims from \$250,000. Settlement Judges do not operate in the High Court. Where mediation is needed, the parties are referred to private centres because they can generally afford a private mediator.

371. Labour mediation is subsidized by the State, trade unions, and employers. The parties pay only a nominal administrative fee.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties move to mediation?

372. At any stage before final judgment and at any level of jurisdiction.

(b) May mediation be used after a dispute has been referred to a court?

373. Yes.

¹⁵ For further details on free and subsidized court-annexed mediation, see *State Courts’ Court Dispute Resolution Cluster*. (n.d.). Singapore Courts. [URL](#)

¹⁶ For an example of the calculation of mediation fees at SMC, see Singapore Mediation Centre. (2026). *Mediation Procedure Rules. Fee Schedule (ANNEX B)*. [URL](#)

(c) Must a judge propose mediation to the parties or refer them to mediation upon a party's application or on the judge's own initiative? If so, at what stage and in what procedural form? May an order directing mediation be appealed?

374. Mediation is proposed at every stage of proceedings, and the court may refer the case to mediation upon the parties' application or on its own initiative by court order under rule 1(1) of Order 5 of the Rules of Court 2021.
375. The possibility of challenge depends on the form in which court-annexed mediation was proposed or ordered:
- where the court merely proposes mediation, no order is issued until the parties consent. A refusal may nevertheless lead to adverse cost consequences (see the discussion of legal costs);
 - where the court issues a formal mediation order, an appeal is very difficult and is governed by the special procedure in section 34 and the Fifth Schedule to the Supreme Court of Judicature Act 1969; and
 - where mediation is required by statute, for example in family cases, the direction cannot be challenged.
376. Under rule 3(5) of Order 5 of the Rules of Court 2021, a party objecting to a mediation order does not appeal, but applies for review by the same judge, explaining why mediation is inappropriate in the particular case.

(d) Does an agreement to mediate stay the court proceedings, and, if so, automatically or only upon a party's application? Does it interrupt the limitation period?

377. Yes. The court issues an order staying the proceedings, usually for 4–8 weeks, under rule 2 of Order 5 of the Rules of Court 2021. Because the court may refer the case to mediation on its own initiative, a stay does not depend solely on an application by the parties.
378. The limitation period is suspended when the parties sign the agreement to mediate under section 12 of the Mediation Act. Time resumes when the procedure ends without a final settlement agreement.

(e) Are there special requirements for mediation connected with a court dispute?

379. See the discussion above concerning Settlement Judges. The general conditions and procedure for mediation are otherwise the same.

(f) Must the mediator inform the court that mediation is taking place or of its results, apart from the final agreement?

380. Where the case is referred to a Settlement Judge, that judge reports the procedural outcome. In other situations, notification may be given by the parties, the mediator, or the mediation centre itself.

(g) Is the mediator prohibited from expressing evaluative opinions, providing legal advice, or proposing possible solutions to the dispute?

381. This depends on the form of mediation, whether facilitative, evaluative, or hybrid. The essential requirement is respect for party autonomy: the parties themselves make the decision.

See also the discussion above.

(h) How are the general principles of mediation implemented and safeguarded when a mediator participates while a case is pending before a court?

382. The principles of mediation and their implementation remain unchanged whether the procedure is judicial or out of court.

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Are special mediation rooms provided in courts?

383. Yes. Courts provide a highly comfortable environment for mediation. The new State Courts building contains dozens of mediation rooms designed to reduce stress.¹⁷

(b) Are there approved regulations or rules for court-annexed mediation?

384. The Mediation Act, the Rules of Court 2021, the SIMI Code of Conduct, and the procedural rules of SIMI and SMC.

(c) What is the maximum duration of mediation conducted during court proceedings? May the court extend it?

385. No maximum period is prescribed. When referring a matter to mediation, the court usually stays the proceedings for 4–8 weeks under rule 2 of Order 5 of the Rules of Court 2021. The parties may make a joint application for an extension, and the court may grant a further 4–8 weeks. It may refuse an extension if mediation appears to be used to delay the proceedings under rule 3(5) of Order 5.
386. Special periods may apply to certain categories of cases. In family disputes, for example, proceedings may initially be adjourned for several months because mediation is often accompanied by consultations with psychologists and child-protection services.

8. Mediated Settlement Agreements and Their Enforcement

(a) What is the legal status of a mediated settlement agreement? Is it a transaction, and does it become a judicial act after court approval?

387. A mediated settlement agreement that has not been approved by a court has the status of a civil contract. If it is breached, the parties bring a court claim and submit the agreement, which is effectively an ordinary contract, as evidence of the breach. For that purpose, the confidentiality rule ceases to apply under section 9(3) of the Mediation Act.
388. Singapore’s “gold standard” is court approval of a mediated settlement agreement even where no court dispute is pending under section 12 of the Mediation Act. The agreement then becomes enforceable as a court order.
389. If an agreement falls within the Singapore Convention, as an international commercial settlement, it may be submitted directly to a Singapore court without prior approval by a court in the country where it was signed under section 4 of the Singapore Convention on Mediation Act 2020.

¹⁷ New State Courts building: Wong, C. (2019). State Courts moves to larger, more modern premises after 44 years. *The Straits Times*. [URL](#); Maxwell Chambers building for arbitration and mediation: Maxwell Chambers. (2026). *Welcome to Maxwell Chambers*. [URL](#); State Courts Towers project: *State Courts Towers*. (2025). President’s Design Award Singapore. [URL](#)

(b) Must the court approve a mediated settlement agreement as a court settlement if it does not contravene the law, or does the court have discretion?

390. Section 12(4) of the Mediation Act is formally framed in discretionary terms. In practice, however, the court approves a mediated settlement agreement after verifying compliance with the statutory requirements.

(c) On what grounds may the court refuse to approve an agreement? Does the court review its substantive legality?

391. The court may refuse approval on any of the grounds specified in section 12(4) of the Mediation Act:

- inconsistency with the law or public policy;
- unenforceability, for example where the wording is too vague to be embodied in an enforceable order;
- defects in the parties' consent; or
- protection of the child's interests, requiring the court to verify additionally that the agreement is in the child's best interests under section 14(4)(d).

392. The court conducts only a formal review of legality and does not investigate the underlying facts, which the parties are taken to accept. Under section 12(3) of the Mediation Act, it also verifies the formal elements of mediation: the existence of an agreement to mediate and a written mediated settlement agreement signed by the parties and the mediator.

(d) How is the agreement compulsorily enforced, for example through a notarial writ of execution, simplified court approval, or a damages claim? What may follow from non-performance, including court fines?

393. Once the court approves a settlement agreement, whether reached during proceedings or submitted from outside them, it has the force of a Consent Order and is equivalent to a judgment in enforceability and enforcement procedure under section 12 of the Mediation Act.

394. Under the Notaries Public Act 1959, notaries in Singapore may authenticate the parties' signatures on an agreement as a civil transaction, but this does not make it an enforceable instrument.

395. Non-compliance with a court-approved mediated settlement agreement may have the following consequences:

- Enforcement proceedings under Order 22 of the Rules of Court 2021:
 - sheriffs may seize and sell the debtor's property at auction;
 - the court may garnish the debtor's bank accounts and transfer funds to the creditor; and
 - a receiver may be appointed over the debtor's assets.
- Court fines and sanctions under Order 21 of the Rules of Court 2021:
 - penalties and interest may accrue on the debt under the approved agreement at the statutory rate; and

- the debtor may be required to reimburse the other party for all costs incurred in securing enforcement.
- Where the agreement requires specified acts to be performed, non-compliance may constitute contempt of court and result in fines or even imprisonment under the Administration of Justice (Protection) Act 2016.

9. Incentives and Barriers to the Use of Mediation in Court

(a) Are the costs of pre-trial mediation treated as litigation costs and recoverable from the losing party?

396. They may be treated as recoverable costs (see below).

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

397. Yes. Courts apply Order 21 of the Rules of Court 2021. If a party succeeds in the case but previously refused mediation without justification, the judge may deny that party recovery of its legal costs or even order it to pay part of the losing party's costs under rule 4 of Order 21.

(c) Are there tax or court-fee benefits for parties that use mediation?

398. Several economic incentives support mediation:

- Partial refund of court fees. In Singapore, hearing fees accrue for each day of trial. The earlier the parties settle, both in time and by level of court, the greater the proportion of the fee refunded under Order 21 of the Rules of Court 2021.
- The costs of private mediation are encouraged to be included in recoverable litigation costs payable by the losing party under Part 15, "Costs", of the Supreme Court Practice Directions.
- Mediation expenses may be deductible for income-tax purposes under section 14 of the Income Tax Act.
- In intellectual-property disputes, a public grant of up to \$100,000 is available to parties that incur mediation costs, provided that the dispute concerns an intellectual-property right registered in Singapore and the mediation takes place in Singapore.¹⁸

(d) What are the principal organizational, economic, and subjective barriers identified by practitioners?

399. The principal barriers identified include:¹⁹

- difficulty in selecting the ideal point for mediation within a strict procedural timetable: mediation held too early, before disclosure, may suffer from insufficient information, while mediation held too late may no longer be economically worthwhile;

¹⁸ For further details on support for mediation in intellectual-property disputes, see *Mediation*. (2026). Intellectual Property Office of Singapore. [URL](#)

¹⁹ See Alexander, N., Abala, A. R. T., Feng, S. L. H., Lopez, S., Ern, J. P. S., & En, R. T. X. (2022). International Dispute Resolution Survey: 2022 Final report, p. 45-48. *Singapore International Dispute Resolution Academy at Singapore Management University*. [URL](#); Alexander, N., Chong, S. (2023). Mediation and Appropriate Dispute Resolution. *Singapore Academy of Law Annual Review of Singapore Cases*. [URL](#); Quek Anderson, D. (2019). Court-Annexed Mediations Within Singapore: A Complex Interface Between Individual Place and the Court Environment. [URL](#)

- lawyers often view mediation as a threat to their income or fear additional costs for the client;
- the psychological attitudes of the parties and their lawyers remain the most difficult barrier. A persistent belief is that the party first proposing mediation will be perceived by the opponent as having a weak legal position; and
- practitioners express doubts about mediators' competence in highly specialized fields.

10. Other Issues

(a) Are alternative forms of conciliation established by law, such as judicial conciliation or negotiations involving lawyers? How do they relate to mediation?

400. Yes.

- Neutral evaluation. The parties present their positions to a neutral person, often a retired judge or experienced expert, who gives a non-binding assessment of the likely outcome in court. The evaluator effectively "predicts" the decision. Neutral evaluation is often used as a "reality check" before mediation.²⁰
- Conciliation. A conciliator takes a more active role than a mediator and may propose specific settlement terms. Conciliation is used most often in labour disputes.²¹

(b) How has the country's historical context influenced the contemporary perception and institutionalization of mediation?

401. Historically, Singapore's multicultural society, including Chinese, Malay, and Indian communities, relied on out-of-court mechanisms for resolving disputes within communities. The preservation of "social harmony" and "face" became foundations for confidence in mediation. Unlike a Western "winner takes all" model, Singapore's historical context favoured compromise.

402. After independence and rapid economic growth, Singapore faced congested courts. In the 1990s, under Chief Justice Yong Pung How, a "judicial revolution" took place and mediation was introduced through a top-down policy. The reform's historical success, including the elimination of the case backlog within several years, produced the modern respect for judicial authority in ADR. Singapore began to promote mediation not as a sign of "weakness", but as State-endorsed "efficiency".²²

(c) What are the stated public-policy objectives for developing mediation: reducing court caseloads, saving the parties' resources, or enhancing international standing?

403. Enhancing international standing. Mediation and arbitration in Singapore are intended to form a single international dispute-resolution hub.

²⁰ For further details, see *Neutral evaluation - Going for neutral evaluation in the State Courts (from 1 April 2022)*. (n.d.). Singapore Courts. [URL](#)

²¹ For further details, see *Employment Claims Act 2016*. (2025). Singapore Statutes Online. [URL](#)

²² See Lee, J. (2017). The Mediation Act 2017: A commentary. *Singapore Academy of Law Journal*, 29, p. 605-608; Alexander, N., Chong, S. Y. (2020). Mediation and appropriate dispute resolution, p. 529-530 (Paras 7-10). *Singapore Academy of Law Annual Review of Singapore Cases*. [URL](#)

404. Access to justice and cost savings. The parties' legal costs should not exceed the value of the dispute, an objective pursued through mandatory use of, or assessment of the suitability of, mediation.

405. Reducing the burden on the judicial system.²³

(d) May a judge act as a mediator?

406. Yes. Singapore has the distinct office of Settlement Judge (see above).

(e) May mediation form part of the legal-aid system? How is mediators' work funded in that case?

407. Yes (see above).

(f) How are online platforms and digitalization changing traditional mediation practice?

408. Digitalization has transformed mediation in Singapore from a physical meeting into a "hybrid ecosystem" in which technology is integrated into legislation and court rules. The principal shift occurred between 2020 and 2023.

409. The Community Justice Technologies platform for small claims allows parties to negotiate through chatbots and online modules before meeting a mediator.²⁴

410. The Singapore International Mediation Centre was among the first institutions worldwide to issue a COVID-19 Protocol that became a standard for remote cross-border disputes, removing geographical barriers.²⁵

²³ For further details on the objectives of mediation, see Menon, S. (2018). The Variable Geometry of Dispute Resolution. Keynote Address, ICCA Conference; Civil Justice Commission. (2018). Report of the Civil Justice Commission. Ministry of Law Singapore; Alexander, N., Chong, S. Y. (2020). Mediation and appropriate dispute resolution. *Singapore Academy of Law Annual Review of Singapore Cases*. [URL](#)

²⁴ For further details on CJT, see State Courts, Singapore. (2017). *Media Release: State Courts enhance small claims process*. Singapore Courts. [URL](#)

²⁵ For further details on the effects of the COVID-19 Protocol, see Alexander, N. (2020). International Mediation and Covid-19 – the new normal? *Kluwer Mediation Blog*. [URL](#)

V. European Union

1. Principal Legislation and Other Instruments

- Mediation Directive – Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;
- European Code of Conduct for Mediators;
- ODR Regulation – Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC;
- ADR Directive, or Consumer ADR Directive – Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC;
- Recommendation No. R (98) 1 of the Committee of Ministers, on family mediation in Europe;
- 2002 Recommendation on Civil Matters – Recommendation Rec (2002) 10 of the Committee of Ministers to member States on mediation in civil matters, adopted on 18 September 2002; and
- CEPEJ Guidelines on Civil Mediation – European Commission for the Efficiency of Justice, Guidelines for a Better Implementation of the Existing Recommendation on Alternatives to Litigation between Administrative Authorities and Private Parties, CEPEJ (2007) 15.

2. Concept and Principles of Mediation

(a) Understanding of Mediation in the Jurisdiction Examined

411. Mediation is a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, voluntarily, to reach an agreement on the settlement of their dispute with the assistance of a mediator. It may be initiated by the parties, suggested or ordered by a court, or prescribed by the law of an EU Member State. The concept also covers mediation conducted by judges who are not responsible for the judicial proceedings in question and excludes attempts at settlement made by the court or judge seised of the dispute during those proceedings (article 3(a) of the Mediation Directive).
412. Under the ADR Directive, mediation is understood as an out-of-court dispute-resolution procedure in which the parties seek to reach an agreement with the assistance of a neutral third party, or ADR entity, that is not empowered to impose a solution but helps the parties reach consensus under articles 2 and 4(g). Such disputes may arise between economic operators within one or more EU Member States where one party is a trader supplying goods or services and the other is a consumer.
413. In family disputes, mediation is defined as a process in which a neutral third person, the mediator, assists the parties in negotiating a joint agreement on issues arising from separation or divorce, including matters concerning children, under section I of Recommendation No. R (98) 1.

(b) Are the principles of voluntariness, confidentiality, and neutrality established by law?

414. Yes.

- Voluntariness. The parties are free to enter the process, withdraw at any stage, and decide independently whether to conclude an agreement. Article 3(a) of the Mediation Directive requires the parties to reach the agreement voluntarily.
- Confidentiality. Article 7 of the Mediation Directive requires Member States to ensure generally that neither mediators nor people involved in administering the process may be compelled to give evidence in court concerning information obtained during mediation, except where overriding considerations of public policy are involved or disclosure is necessary to implement or enforce the agreement.
- Neutrality and impartiality. A mediator must have no personal interest in the outcome and must not favour either party. Article 3(b) of the Mediation Directive defines a mediator as a person acting in an “effective, impartial, and competent way”.

415. Section 2 of the European Code of Conduct for Mediators explains mediator independence and impartiality in detail. Paragraph 2.1 separately identifies independence and neutrality, characterized by the absence of conflicts of interest, affiliations, and any interest in the outcome of the dispute.

416. Paragraph 2.2 addresses impartiality, which concerns both the mediator’s own equal treatment of the parties and the parties’ subjective perception that the mediator treats them equally.

(c) What are the limits of confidentiality? May negotiations be relied upon in court?

417. As a general rule, information about negotiations may not be disclosed, including in court, subject to the exceptions in article 7 of the Mediation Directive:

- where overriding considerations of public policy so require, including the protection of children or prevention of harm to a person’s physical or psychological integrity;
- where disclosure of the agreement’s content is necessary to implement or enforce it; or
- under section 4 of the European Code of Conduct for Mediators, where the parties themselves consent to disclosure of confidential information.

(d) Is legality established as a condition for a mediated settlement agreement?

418. Legality is reviewed by the authorities responsible for approving the agreement. The mediator is responsible for procedural fairness, while the parties’ lawyers or competent authorities are responsible for legality. Paragraph 20 of the CEPEJ Guidelines on civil mediation states that Member States should consider requiring mediators to inform the parties that their agreement must not be contrary to public policy.

419. The consumer ADR framework should also be noted. Article 11(a) of the ADR Directive provides that an agreement reached cannot deprive the consumer of the protection guaranteed by law.

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What disputes does mediation cover (civil, commercial, employment, administrative, etc.)?

420. Article 1(2) of the Mediation Directive establishes the broadest possible scope for mediation: it applies to all civil and commercial matters, including cross-border disputes. Under EU law, employment disputes also fall within civil matters and may therefore be mediated unless national law provides for a specialized labour arbitration procedure.
421. The Mediation Directive expressly excludes tax, customs, and administrative matters, but the CEPEJ Guidelines on Civil Mediation encourage mediation between private persons and public authorities where appropriate.
422. Family mediation is governed by Recommendation No. R (98).
423. Mediation is also relatively well developed in criminal matters in the EU, although it falls outside the general Mediation Directive and is governed by other instruments: Recommendation CM/Rec (2018) 8 concerning restorative justice in criminal matters and Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime.
424. In other words, the emphasis is on restorative justice and safeguards for victims who choose to participate in mediation. Criminal mediation is subject to a lower degree of confidentiality, as the mediator reports its outcome to the prosecutor or judge, who conducts a preliminary review of the legality of the arrangements reached before the hearing. Criminal mediation may not be used to secure an admission of guilt.

(b) Are there any exclusions from the scope of mediation (for example, disputes involving public interests)?

425. Mediation is unavailable or restricted in cases involving matters that the parties may not dispose of independently. Article 6(1) essentially concerns disputes involving a public interest.
426. Mediation is also excluded for disputes arising from acts or omissions of the State in the exercise of public authority (*acta iure imperii*).

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

427. The statistics vary significantly depending on the national measures used to promote mediation. Overall, according to the European Commission report on the application of the Mediation Directive, the use of court-related mediation has increased in countries that employ soft forms of compulsion.²⁶

²⁶ See further: European Commission. Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters. COM(2016) 542 final. (2016). [URL](#)

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

428. Yes. These include guidance from the Court of Justice of the European Union (CJEU) and its judgments in several cases:

- *Alassini* (Joined Cases C-317/08 to C-320/08). The Court upheld mandatory pre-litigation mediation. In essence, the judgment allowed EU Member States to introduce mandatory pre-litigation mediation. As a result, some States established systems in which a court will not accept a statement of claim unless the claimant provides a certificate from a mediator;
- *Menini* (Case C-75/16, September 2017) clarified certain aspects of *Alassini*, emphasizing that mandatory mediation must be very inexpensive and that representation by lawyers is not compulsory;
- *Momchil* (Case C-494/21, June 2023) originally concerned criminal proceedings, but the Court clarified the limits of confidentiality and mediator immunity, holding that national courts may not require disclosure of the content of negotiations unless this is necessary to prevent serious crime.

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

429. These requirements are decentralized and determined by national law. The Mediation Directive and other instruments establish only the following:

- a mediator may be any third person who is asked to conduct mediation in an effective, impartial, and competent manner. Membership of a self-regulatory organization is not mandatory, but is encouraged (Articles 3(b) and 4 of the Mediation Directive);
- a mediator may combine mediation with any other professional activity, if conflicts of interest are avoided;
- a mediator must have appropriate training supported by practical experience or a certificate (Article 1.1 of the European Code of Conduct for Mediators);
- Member States must encourage high-quality initial and continuing training of mediators (Article 4(2) of the Mediation Directive);
- membership fees and payments required to maintain professional status are determined by national chambers, associations, and other self-regulatory organizations;
- the European Code of Conduct for Mediators imposes relatively strict requirements concerning professional reputation and ethics (Articles 1.1 and 2.1).

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

430. No such requirement applies.

(c) What requirements must a mediator meet in order to participate in court proceedings, and may the parties or the court impose additional requirements?

431. The 2002 Recommendation on mediation in civil matters provides that mediation may be ordered by the court hearing the case and that the procedure must be conducted by a person

independent of both the parties and the judicial system (section “Organization of Mediation”, para. 12).

432. EU legal instruments do not impose any additional requirements.

(d) Are mediators specialized by category of case, and how is such specialization regulated?

433. There is functional specialization among mediators because several EU legal instruments govern mediation in different categories of disputes.
434. The general requirement follows from Article 1.1 of the European Code of Conduct for Mediators: mediators must be competent and possess the necessary knowledge in the field of mediation.
435. The ADR Directive requires mediators to possess specific knowledge and skills in alternative or out-of-court resolution of consumer disputes, as well as a general understanding of law (Article 6(1)(a)).
436. Recommendation No. R (98) expressly requires specialized training for family mediation (section V, “Status of the Mediator”).
437. Paragraph 24 of the CEPEJ Guidelines on Civil Mediation recommends maintaining lists of mediators indicating their areas of specialization, enabling courts to refer parties to an appropriate specialist.

(e) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

438. Under the principal provisions of the Mediation Directive, including Article 3(b), a mediator is defined exclusively as a neutral intermediary. A judge who is not involved in the adjudication of the dispute may act as mediator.
439. The neutral status of the mediator, strictly separate from the judicial system, is also emphasized in paragraph 12 of the section “Organization of Mediation” of the 2002 Recommendation on mediation in civil matters and in paragraph 27 of the CEPEJ Guidelines on Civil Mediation.

(f) Are a mediator’s rights and duties laid down in procedural law?

440. The mediator’s only procedural right is immunity from being compelled to testify, as discussed above: the mediator may not disclose information concerning the substance of the procedure and must preserve confidentiality.
441. EU law does not require mandatory registers of mediators or prescribe an accreditation procedure; these matters are determined at national level (indirectly, Article 4 of the Mediation Directive).
442. Paragraph 24 of the CEPEJ Guidelines on Civil Mediation recommends that courts and public authorities make lists of accredited mediators publicly available so that individuals can readily find a suitable professional.
443. The ADR Directive regulates this issue more strictly. Article 20 requires each EU Member State to compile a list of ADR entities meeting the applicable quality criteria and submit it to the European Commission. This resulted in the creation of an EU online platform (the ODR Platform) containing accredited providers for disputes governed by the ADR framework.

(g) For what may a mediator be held liable?

444. In dealings with the court, a mediator enjoys immunity. For example, a mediator is protected against being compelled to participate in court proceedings and may not be held liable for refusing to testify about the mediation procedure (Article 7(1) of the Mediation Directive). An exception applies where the mediator acts to the detriment of public interests.
445. In relation to the participants, a mediator may incur:
- disciplinary and ethical liability for breach of the European Code of Conduct for Mediators (Article 2.1), although the form of liability is determined by national law;
 - liability under national law for breach of confidentiality (section 4 of the European Code of Conduct for Mediators);
 - liability for damage caused by gross negligence or intentional misconduct (professional negligence).
446. The general European approach to mediator liability is based on the principle that the mediator is responsible for the process, but not for the outcome. Liability may arise where the process is conducted inadequately, for example, where the mediator fails to warn the parties of risks associated with provisions, breaches procedural principles, or fails to provide competent support in preparing the final agreement. By contrast, a mediator is not liable merely because the parties conclude an agreement that proves disadvantageous to them, since the decision is made by the parties themselves.

(h) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

447. The mediator may terminate the procedure on the following grounds (section 2 of the European Code of Conduct for Mediators):
- a conflict of interest;
 - the ineffectiveness of the procedure, where it is unlikely to result in settlement;
 - unethical conduct, including where the parties pursue unlawful aims.
448. The procedure must be terminated under the mandatory provisions of the ADR Directive where:
- the mediation exceeds the 90-day time limit;
 - the dispute is abusive, frivolous, or vexatious.
449. Consequences for the parties: protection of limitation periods and access to judicial remedies (Article 8 of the Mediation Directive).
450. Consequences for the court: resumption of the proceedings following notification that mediation has ended, without disclosure of the reasons (section “Links with Judicial Proceedings” of the 2002 Recommendation on mediation in civil matters).
451. Consequences for the mediator: payment in accordance with the applicable arrangements and notification of the court in accordance with national law (Article 3.3 of the European Code of Conduct for Mediators).

(i) How is the mediator's remuneration paid, and by whom?

452. This depends on the type of mediation. Under the European Code of Conduct for Mediators, the general rule is that the parties share the costs of mediation equally.
453. In the EU, mediators are paid for their participation in the process rather than for the result. Paragraph 33 of the CEPEJ Guidelines on Civil Mediation provides that remuneration is usually calculated by reference to time spent, on an hourly basis, or as a fixed amount per session.
454. The costs of mediation may also be covered by certain categories of people. Paragraph 36 of the CEPEJ Guidelines on Civil Mediation encourages States to cover all or part of the mediator's fees from public funds for persons of limited means.
455. Mediation under the ADR Directive should be considered separately. As mediation is effectively provided through ADR entities, it is either free of charge for users or subject only to a nominal fee (Article 8 of the ADR Directive).
456. In effect, the costs are borne by businesses or the State through contributions to ADR entities.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties proceed to mediation?

457. Article 5(1) of the Mediation Directive provides that a court may, where appropriate and having regard to all the circumstances of the case, invite the parties to use mediation to settle the dispute.
458. Paragraph 15 of the CEPEJ Guidelines on Civil Mediation further clarifies that mediation may take place at any level of jurisdiction and at any stage of the proceedings before final determination of the dispute.
459. Mediation under the ADR framework is always out of court and is therefore not considered here. However, the ADR framework requires the parties first to make a direct attempt to settle the dispute, for example, by one party submitting a complaint to the other (Article 5(4)(a) of the ADR Directive).

(b) May mediation be used after a dispute has been brought before a court?

460. Yes.

(c) Must a judge invite or refer the parties to mediation upon a party's application or on the court's own initiative? If so, at what stage and in what procedural form? May an order referring to the case to mediation be appealed?

461. Under Article 5(2) of the Mediation Directive, national law may require the parties to attend an information session with mediators before the court proceedings continue. This is not regarded as an infringement of the right of access to a court.
462. The remaining issues are governed by national procedural law.
463. This means that, after a claim has been filed and during preparation of the case for trial, the court may refer the parties to such an information session.

(d) Does a mediation agreement stay court proceedings, automatically or only upon a party's application? Does the agreement interrupt the limitation period?

464. Yes. A mediation agreement stays the court proceedings (Article 5 of the Mediation Directive).
465. EU law establishes the general principle that recourse to mediation must not deprive the parties of access to judicial protection because of the expiry of a limitation period:
- Recital 24 of the Mediation Directive provides that, to encourage the parties to use mediation, Member States must ensure that their rules on limitation periods do not prevent the parties from subsequently bringing court or arbitration proceedings if the mediation attempt fails;
 - Article 8(1) of the Mediation Directive requires Member States to ensure that parties who choose mediation to settle a dispute are not subsequently prevented from initiating judicial or arbitral proceedings in relation to that dispute by the expiry of limitation periods during the mediation process.
466. A similar requirement is contained in Article 12 of the ADR Directive.
467. Both directives establish only a general requirement: recourse to mediation must not prejudice the right to bring proceedings because of procedural time limits. The specific mechanisms, such as suspension or extension of limitation periods, are determined by the Member States.

(e) Are there any special requirements applicable to mediation connected with court proceedings?

468. For certain categories of cases, national law may provide for mandatory pre-trial mediation under Article 5(2) of the Mediation Directive, provided that:
- it is affordable;
 - it does not cause excessive delay to the principal proceedings;
 - the parties may leave the process and return to court proceedings.

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by submitting the final settlement?

469. Paragraph 27 of the CEPEJ Guidelines on Civil Mediation provides that the mediator should inform the court only whether mediation took place, whether the parties reached a full or partial agreement, or whether the mediation ended without an agreement.
470. Thus, the mediator may inform the court of the formal status of the mediation.
471. Where the court proceedings have been stayed for mediation, the parties or the mediator must notify the court of the outcome by the date on which the stay expires (Article 5(1) of the Mediation Directive).

(g) Is a mediator prohibited from expressing evaluative views, providing legal advice, or proposing settlement options?

472. In practice, mediation models in the EU fall into two categories: facilitative mediation, in which the mediator merely assists the parties in reaching a decision (see Article 3.3 of the European Code of Conduct for Mediators), and evaluative mediation, in which the mediator

may express an opinion (Article 9(2)(a) of the ADR Directive), although that opinion is never binding on the parties.

473. In family mediation, the mediator must refrain from evaluating the decisions reached and must remain neutral (section V, “Status of the Mediator”, of Recommendation No. R (98)).
474. At the level of general legislation, only the provision of legal advice is prohibited. Otherwise, the mediator’s principal task is to facilitate settlement while preserving neutrality and voluntariness.

(h) How are the general principles of mediation implemented and safeguarded where a mediator participates after court proceedings have commenced?

475. See above.

7. Procedural Aspects of Interaction Between Courts and Mediation

(a) Are dedicated mediation facilities available in courthouses?

476. Paragraph 18 of the CEPEJ Guidelines for a Better Implementation of the Existing Recommendation Concerning Family Mediation and Mediation in Civil Matters (CEPEJ (2007) 14) recommends that Member States provide suitable rooms for mediation in court buildings. The establishment of mediation information centres or “mediation desks” in courts should also be encouraged to inform parties about mediation and facilitate immediate recourse to the procedure.

(b) Are there approved regulations or rules governing court-related mediation?

477. The general framework and recommendations are set out in the Mediation Directive, the 2002 Recommendation on mediation in civil matters, and the CEPEJ Guidelines on Civil Mediation.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

478. Specific time limits are left to national law.
479. Under Articles 5 and 8 of the Mediation Directive, the duration of mediation is determined by the national court staying the proceedings. The court may extend the period upon the parties’ application where progress is being made in negotiations, and the overall duration of the proceedings remains within a reasonable time.
480. The 2002 Recommendation on mediation in civil matters and the CEPEJ Guidelines on Civil Mediation recommend staying proceedings for one to three months and extending that period upon a joint application by the parties. Where the parties and the mediator report that an agreement cannot be reached, the court may resume the proceedings before the stay expires.
481. The strict time limit is established by the ADR Directive: mediation must be completed within 90 days and may be extended only in exceptional circumstances (Article 8(d)).

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act following approval?

482. Once approved, it constitutes an enforceable instrument (see below).

(b) Must a court approve a mediation settlement as a court settlement if it is lawful, or is approval discretionary?

483. The court must approve it (Article 6 of the Mediation Directive).

(c) On what grounds may a court refuse to approve a settlement? Does the court review its substantive legality?

484. Under Article 6(4) of the Mediation Directive, approval of a mediation settlement, that is, conferral of enforceability, may be refused only where:

- the content of the settlement is contrary to the law of the EU Member State in which approval or enforcement is sought;
- the law of that State does not provide for enforcement in relation to the relevant category of dispute.

(d) How is the settlement enforced (notarial writ of execution, simplified court approval, or an action for damages)? What consequences may follow from non-compliance, such as judicial fines?

485. Article 6 of the Mediation Directive establishes the following general principles for enforcement of mediation settlements:

- a court or other competent authority may confirm the content of the settlement in a judgment, order, or other appropriate instrument;
- a settlement that has become enforceable in one Member State is recognized as such in other Member States in accordance with general EU law.

486. Article 3.3 of the European Code of Conduct for Mediators imposes an ethical duty on mediators who, at the parties' request and within the limits of their competence, may inform the parties how they can formalize their settlement and what options are available to make it enforceable.

9. Incentives and Barriers to the Use of Mediation in Court

(a) Are the costs of pre-litigation mediation treated as legal costs and recoverable from the losing party?

487. At the general regulatory level, pre-litigation mediation is treated as a private arrangement between the parties, and its costs are not included in legal costs; the matter is left to national law (para. 35 of the CEPEJ Guidelines on Civil Mediation).

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

488. Paragraph 35 of the CEPEJ Guidelines on Civil Mediation allows national law to impose part of the legal costs on a party that unjustifiably refused or frustrated mediation, even if that party ultimately prevailed in court.

(c) Are tax or court-fee benefits available to parties that have used mediation?

489. Paragraph 35 of the CEPEJ Guidelines on Civil Mediation recommends that Member States reduce legal costs for parties that choose mediation. Specific measures are determined by each State.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

490. The following barriers to the use of mediation have been identified:²⁷

- the cost of mediation; the rate of use is higher where public funding is available;
- resistance from the legal profession;
- low public awareness.

10. Other Issues

(a) May a judge act as mediator?

491. Yes, provided that the dispute is not pending before that judge (see above).

(b) May mediation form part of a legal-aid system? How are mediators remunerated in that case?

492. See above. This is recommended but remains within the discretion of Member States.

(c) How are online platforms and digitalization changing traditional mediation practice?

493. New technologies have had the greatest impact on mediation under the ADR framework. Following the launch of the online platform and the adoption of the separate ODR Regulation, approximately 50,000 cases are processed through the platform each year.

494. According to a 2020 European Commission report, mediation has been integrated into litigants' personal online portals in some countries.²⁸

²⁷ See further: European Commission. Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters. COM(2016) 542 final. (2016). [URL](#)

²⁸ European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Digitalisation of justice in the European Union. A toolbox of opportunities. COM(2020) 710 final. (2020). [URL](#)

VI. Germany

1. Principal Legislation and Other Instruments

- MediationsG – Mediation Act of 21 July 2012 (Federal Law Gazette I, p. 1,577);
- EGZPO – Introductory Act to the Code of Civil Procedure (Einführungsgesetz zur Zivilprozessordnung);
- ZPO – Code of Civil Procedure (Zivilprozessordnung);
- BGB – German Civil Code (Bürgerliches Gesetzbuch);
- FamFG – Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit);
- ArbGG – Labour Courts Act (Arbeitsgerichtsgesetz).

2. Concept and Principles of Mediation

(a) Understanding of mediation in the jurisdiction under review

495. Article 1 of the MediationsG provides:

- Mediation is a confidential and structured process in which the parties voluntarily and independently seek an amicable settlement of their conflict with the assistance of one or more mediators.
- A mediator is an independent and impartial person without decision-making authority who guides the parties through mediation.

496. In Germany, mediation is an out-of-court procedure, separate from court proceedings and conducted by a private mediator, either before litigation is commenced (*außergerichtliche* Mediation) or after court proceedings have begun (*gerichtsnahe* Mediation). Little information is available on the latter because judicial conciliation and conciliation by a settlement judge are used more frequently.

497. Conciliation by a settlement judge is a procedure within court proceedings in which the case is referred to a settlement judge (*Güterichter*), who is not authorized to determine the merits and instead performs a mediator-like role. This procedure was formerly called judicial mediation (*richterliche* Mediation), but that term was abandoned at the request of private mediators.

498. Judicial conciliation is a fundamental principle of the German justice system: the judge invites the parties to settle rather than determining the dispute on the merits.

(b) Are the principles of voluntariness, confidentiality, and neutrality established by law?

499. Confidentiality is established by Article 4 of the MediationsG.

500. Voluntariness follows from the definitions of mediation and mediator.

501. Neutrality follows from the definition of mediator.

502. A mediator is also subject to a transparency requirement and must disclose to the parties any circumstances capable of casting doubt on the mediator's independence or impartiality (Article 3(1) of the MediationsG). In addition, a mediator may not conduct mediation if the mediator previously represented one of the parties, nor may the mediator represent a party during or after mediation (Article 3(2)). A similar prohibition applies where the mediator and a party belong to the same professional association or work in the same office, although this restriction may be waived with the parties' informed consent.

(c) What are the limits of confidentiality? May negotiations be relied on in court?

503. The limits of confidentiality are set out in Article 4 of the MediationsG:
- disclosure of the content of a settlement reached in mediation is necessary to implement or enforce it;
 - disclosure is necessary for overriding public-policy reasons, particularly to prevent a threat to a child's welfare or serious harm to a person's physical or psychological integrity; or
 - the facts concerned are common knowledge or insufficiently significant to justify confidential treatment.

(d) Is legality established as a condition for a mediation settlement?

504. The law does not expressly establish legality as a condition for a mediation settlement.

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What disputes does mediation cover, and are there any exclusions?

505. Mediation is available for all types of disputes, including civil, commercial, and employment disputes. Only criminal proceedings are excluded.

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

506. Data on court-related mediation involving settlement judges are included in publicly available judicial statistics. No reliable statistics on out-of-court mediation were identified.

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

507. There is case law on various issues.

(c) What is the judiciary's attitude towards mediation? What concerns or difficulties do judges identify?

508. Private mediation and court-related mediation are generally treated as distinct systems. Within court-related mediation, some judges actively participate as settlement judges, while others prefer to facilitate settlement within the proceedings without referring the case to a settlement judge. Cases referred to court-related mediation remain on the docket of the judge responsible for the merits.

(d) How active is the mediation community in cooperating with courts?

509. The relationship between the mediation community and judges is characterized more by tension than cooperation. For example, in 2013 mediators successfully insisted that settlement judges should not be called “mediators” (Article 9 of the MediationsG).

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

510. Article 5 of the MediationsG establishes only a general competence requirement and addresses certification and the approximate content of basic training for certified mediators, including negotiation techniques, conflict studies, mediation law and procedure, and practical exercises. More detailed requirements for training programmes are established by a regulation of the Federal Ministry of Justice and Consumer Protection under Article 6 of the MediationsG: the Certified Mediators Training Regulation (*Zertifizierte-Mediatoren-Ausbildungsverordnung*) of 21 August 2016. Overall, the legislature seeks to preserve free competition in the market for mediation services.²⁹
511. Mandatory requirements include at least 130 hours of training and five supervised mediations within three years after completion of the training, performed as mediator or co-mediator. The training institution issues the certificate.

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

512. No such requirement applies to mediators, who may come from different professional backgrounds. A settlement judge must be fully qualified for judicial office and complete additional conciliation training.

(c) Are mediators specialized by category of case, and how is such specialization regulated?

513. The law does not establish such specialization. In practice, mediators specialize according to the relevant field of mediation and the standards applicable in that field.

(d) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

514. A strict distinction must be drawn between out-of-court mediation and court-related mediation conducted by settlement judges. In both cases, however, the mediator’s role is essentially that of an independent neutral intermediary.

(e) Are mediator’s rights and duties laid down in procedural law? If so, what are they, and at what level are they regulated (self-regulation, national law, Länder or cantonal law, a public accreditation and registration system, etc.)?

515. For private mediators, rights and duties are established by the standards of the relevant sectors and organizations.

²⁹ Ferrand, F. Chapitre 437 – Médiation – droit de l’Union européenne et du Conseil de l’Europe. Dalloz Action, 2024/2025, para. 437.32.

516. Mediators must nevertheless be certified (see **paras. 510–511 above** on the uniform educational standard, which consists of general requirements).

(f) For what may a mediator be held liable?

517. The MediationsG contains no special provisions on liability.

(g) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

518. Yes. A private mediator may terminate the mandate, particularly where the mediator considers that the parties are unlikely to communicate independently or reach an agreement (Article 2 of the MediationsG).

(h) How is the mediator's remuneration paid, and by whom?

519. In private mediation, the parties pay the mediator's remuneration. Court-related mediation is free of charge.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties proceed to mediation?

520. The parties may proceed to mediation at any stage, although mediation is considered particularly effective at an early stage of the dispute or on appeal.

(b) May mediation be used after a dispute has been brought before a court?

521. Yes. With the parties' consent, the court may stay the proceedings for mediation or another alternative dispute-resolution procedure (§ 278a(2) ZPO, § 54a ArbGG, and § 36a FamFG).
522. The parties may use out-of-court mediation or conciliation before a settlement judge, who does not determine the dispute but applies conciliation techniques. The second procedure involves no additional payment by the parties and, if successful, results in a reduction of the court fee.

(c) Must a judge invite or refer the parties to mediation upon a party's application or on the court's own initiative? If so, at what stage and in what procedural form? May an order referring the case to mediation be appealed?

523. A judge may not compel the parties to mediate, but may invite them to do so and make a specific recommendation (§ 278a(1) ZPO).
524. Under § 278(5) ZPO, referral to a settlement judge is within the discretion of the court hearing the case. If a party expressly objects, the court will refrain from making a referral. An express statement of consent is not required (Bavarian State Social Court, decision of 5 September 2016, L 2 P 30/16 B; Hanover Labour Court, decision of 1 February 2013, 2 Ca 10/13, ZKM 2013, 130).
525. It is also important that promoting settlement between the parties is a fundamental principle of the justice system (§ 278 ZPO). This is reflected in encouragement to seek an amicable solution before going to court and in the court's duty to facilitate settlement at different stages of the proceedings, including by conducting a conciliation hearing at the outset.

526. In particular, the statement of claim must indicate whether mediation or another form of out-of-court settlement was attempted before the claim was filed and whether any reasons prevent the use of such a procedure (§ 253(3) ZPO).

527. Expert comment: “The requirement to explain why an out-of-court settlement could not be reached is intended to provide the judge with criteria for determining whether, and by what means, an amicable solution may be achieved during the proceedings. A statement of claim that omits the required information may be regarded as defective; as a rule, the court will request the missing information.”³⁰

(d) Does a mediation agreement stay court proceedings, automatically or only upon a party's application? Does the agreement interrupt the limitation period?

528. Yes. Under § 278a ZPO, if the parties decide to use mediation or another alternative dispute-resolution procedure, the court must stay the proceedings.

529. The general rule in § 203 BGB applies to mediation: where negotiations between the debtor and creditor concern a claim or the circumstances giving rise to it, the limitation period is suspended until one party refuses to continue the negotiations. The limitation period does not resume until at least three months after the suspension ends.

(e) Are there any special requirements applicable to mediation connected with court proceedings?

530. See above.

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by submitting the final settlement?

531. The law does not impose such a requirement on the mediator.

(g) Is a mediator prohibited from expressing evaluative views, providing legal advice, or proposing settlement options?

532. Article 2 of the MediationsG states the following duties of a mediator:

- The mediator must ensure that the parties understand the fundamental principles of the mediation process and its conduct, and that they participate voluntarily.
- The mediator owes equal duties to all parties, must facilitate communication between them, and must ensure their appropriate and fair participation in the mediation process. Separate meetings may be held with individual parties if all parties consent.
- Where the parties reach an agreement, the mediator must seek to ensure that they conclude it with an awareness of the underlying circumstances and an understanding of its content. The mediator must inform parties participating without professional advisers that they may, where necessary, obtain external advice to review the agreement. With the parties' consent, the agreement reached may be recorded as final.

³⁰ Greger, R. Alternative Konfliktlösung im gerichtlichen Verfahren, Neue Wege – neue Chancen. Publication on the website of the Bavarian judiciary; similarly, Judge Moltmann-Willisch states that the claim will not be dismissed, but the requirement will encourage representatives to consider a possible amicable settlement.

7. Procedural Aspects of Interaction Between Courts and Mediation

(a) Are dedicated mediation facilities available in courthouses?

533. Facilities are provided only for settlement judges.

(b) Are there approved regulations or rules governing court-related mediation?

534. Yes. Rules and regulations are adopted by mediation organizations and associations.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

535. The law establishes no minimum or maximum period; the court determines the duration.

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act following approval?

536. A mediation settlement is a civil-law contract.

(b) Must a court approve a mediation settlement as a court settlement if it is lawful, or is approval discretionary?

537. No. The court is not required to approve it.

(c) On what grounds may a court refuse to approve a settlement? Does the court review its substantive legality?

538. No information was identified.

(d) How is the settlement enforced (notarial writ of execution, simplified court approval, or an action for damages)? What consequences may follow from non-compliance, such as judicial fines?

539. The legislation does not establish a special procedure for enforcing mediation settlements. The general mechanisms under § 794 ZPO apply, including recording the settlement in the court record, notarization, or an instrument prepared by a lawyer and submitted to the court.

9. Incentives and Barriers to the Use of Mediation in Court

(a) Are the costs of pre-litigation mediation treated as legal costs and recoverable from the losing party?

540. No.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

541. No.

(c) Are tax or court-fee benefits available to parties that have used mediation?

542. No.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

543. The 2017 report of the German Federal Ministry of Justice reached the following principal conclusions:³¹

- the number of mediations conducted was low and mediation work was concentrated among a small number of mediators;
- mediators' earnings were low, causing many to teach in addition to practising;
- although mediators proposed financial assistance to promote mediation, the report recommended introducing general financial assistance without regard to the characteristics of different categories of disputes;
- mediators and the report's authors agreed that enforceability of mediation settlements would be useful, although they did not identify a need for special regulation;
- the way mediators were certified, as at 2016, was not material to the parties.

10. Other Issues

(a) Are there alternative conciliation procedures established by law, such as judicial conciliation or lawyer-assisted negotiation? How do they relate to mediation?

544. Judicial conciliation is actively used in Germany as part of the ordinary conduct of court proceedings.

(b) How has the country's historical context influenced the contemporary perception and institutionalization of mediation?

545. Historically, pre-litigation negotiations and judicial determination were the principal means of resolving disputes. From the 1990s, mediation developed as a discipline imported from the United States among legal sociologists, criminologists, social workers, and some judges and lawyers, although practising lawyers were largely unaware of these developments. Mediation therefore developed by sector rather than systematically, including in juvenile criminal proceedings and divorce cases. Commercial mediation emerged later and remains difficult to study in detail because of its confidential and business-oriented nature. The literature nevertheless notes the creation of specialized associations and the introduction into insolvency legislation of mediation between debtors and creditors before court proceedings are commenced. Successful environmental cases, including cases concerning urban development, have also been reported.^{32 33}

546. Court-assisted settlement during litigation remains the norm and was reinforced in 2002, when the ZPO introduced a mandatory conciliation hearing conducted by the judge at the beginning of proceedings in the parties' presence.³⁴

³¹ Bericht der Bundesregierung über die Auswirkungen des Mediationsgesetzes auf die Entwicklung der Mediation in Deutschland und über die Situation der Aus- und Fortbildung der Mediatoren. (2017). Bundesministerium Der Justiz Und Für Verbraucherschutz. [URL](#)

³² Hoffmann, A. (2007). Mediation in Germany and the United States. *European Journal of Law Reform*, 9(4), 505–552, at p. 518.

³³ Ibid.

³⁴ Gaillotte, A., Véricel, M. (2026). Faut-il encourager la résolution amiable des litiges du travail? *Revue de droit du travail*, p. 8.

547. During the 2000s, the Länder also experimented under § 15a EGZPO with mandatory pre-litigation mediation for certain categories of disputes, principally to reduce public expenditure, and implemented other “judicial mediation” projects. Although the literature and judicial practice generally describe these experiments as unsuccessful, they contributed to the development of the debate on court-related mediation. They also provided the basis for the role of the settlement judge: an ordinary judge who has completed additional training and to whom the case is referred by the judge determining the merits.^{35 36}

548. The adoption of the Mediation Act and related provisions was driven both by domestic developments – the Federal Constitutional Court stated in 2007 that, “In a State governed by the rule of law, it is preferable to resolve a dispute by mutual agreement rather than through adversarial proceedings and a judicial decision” (decision 1 BvR 1351/01, cited by Trenczek and Loode) – and by obligations arising from EU membership, including the need to transpose the relevant EU directive.

(c) What is the stated public-policy objective of developing mediation: reducing court caseloads, lowering parties’ costs, or maintaining international standing?

549. The objectives usually identified are reducing court caseloads, lowering parties’ costs, and enabling the parties to reach a mutually beneficial solution without the constraints inherent in litigation, including uncertainty and the inability to disclose all relevant circumstances.

(d) May a judge act as mediator?

550. Only a settlement judge – an incumbent judge performing a mediator-like role – may act as mediator.

(e) May mediation form part of a legal-aid system? How are mediators remunerated in that case?

551. Only mediation conducted by settlement judges forms part of the public system. Settlement judges are salaried judges, and no separate funding is provided.

(f) How are online platforms and digitalization changing traditional mediation practice?

552. No data were identified.

³⁵ Hoffmann, A. Mediation in Germany and the United States, p. 522.

³⁶ Ibid.; Moltmann-Willisch, A.-R. (Judge). (2–4 November 2014). *Extra-judicial and judicial mediation and attempt of settlement as a prerequisite for bringing a dispute to court* [Conference paper]. ENCJ North Western Region Seminar on Timeliness.

VII. Italy

1. Principal Legislation and Other Instruments

- DL No. 28 – Legislative Decree No. 28 of 4 March 2010, consolidated text incorporating amendments made by Legislative Decree No. 149 of 10 October 2022 and Legislative Decree No. 216 of 27 December 2024;
- DM No. 150 – Decree No. 150 of the Ministry of Justice of 24 October 2023;
- D. 2023 – Decree of the Ministry of Justice and the Ministry of Economy and Finance of 1 August 2023.

2. Concept and Principles of Mediation

(a) Understanding of mediation in the jurisdiction under review

553. Mediation means an activity, however named, carried out by an impartial third party and aimed at assisting two or more parties in reaching an amicable agreement to settle a dispute, including by formulating a settlement proposal (Article 1 of DL No. 28).

(b) Are the principles of voluntariness, confidentiality, and neutrality established by law?

554. Confidentiality is established by Article 9 of DL No. 28, which requires all persons providing services in, or participating in, mediation to preserve the confidentiality of statements and information obtained during the procedure. The mediator must also refrain from disclosing to the other parties the statements and information received from one party during a private session.
555. Under Article 10 of DL No. 28, statements made and information obtained during mediation may not be used, even in part, in court proceedings concerning the same matter that are commenced, resumed, or continued following unsuccessful mediation, unless the party that made the statement or provided the information consents. No witness evidence or oath may be taken concerning the content of such statements or information. Mediators are subject to professional-secrecy rules comparable to those applicable to clergy, lawyers, notaries, physicians, and other professionals.
556. The principle of neutrality follows from the definition of mediation set out above, which requires the third party to be “impartial”.
557. The legislation does not expressly state a principle of voluntariness, presumably because mandatory procedures exist. It must, however, be interpreted in the light of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (see Chapter V above), and voluntary participation therefore remains relevant.

(c) What are the limits of confidentiality? May negotiations be relied on in court?

558. The parties may agree that an expert report commissioned during mediation may be submitted to the court (Article 8(7) of DL No. 28).

(d) Is legality established as a condition for a mediation settlement?

559. It follows indirectly that a settlement may not contravene mandatory rules or public policy (see the discussion of enforcement below).

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What disputes does mediation cover (civil, commercial, employment, administrative, etc.)?

560. Civil and commercial disputes concerning rights of which the parties may dispose (Article 2 of DL No. 28).
561. According to the National Mediation Council, court-ordered mediation is particularly suitable for disputes concerning rights in rem, including ownership, use, and easements; co-ownership of immovable property; succession; division of property; leases; and loans for use. It is less effective for contractual disputes concerning insurance, banking, and finance, as well as claims for damage arising from medical or healthcare liability.

(b) Are there any exclusions from the scope of mediation (for example, disputes involving public interests)?

562. Criminal proceedings and rights of which the parties may not dispose of are excluded.

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

563. According to data published by the Italian Ministry of Justice for 2024, more than 160,000 mediations were conducted: 78% were mandatory pre-litigation mediations, 10% voluntary mediations, and 12% court-ordered mediations. Of the court-ordered mediations, 92% arose because the parties had not complied with a pre-litigation mediation requirement, making the claim inadmissible. 56% of all court-ordered mediations concerned banking contracts and leases. Compared with 2023, the number of mediations commenced fell by approximately 9%, while the number successfully completed increased by 1%. Party participation was highest in disputes concerning consortia or business associations, succession, concessions, and other commercial contracts. Following an information meeting with a mediator, the parties proceeded to mediation in 59% of cases. Approximately 70% of decisions to proceed to mediation occurred in disputes concerning financial contracts, division of property, succession, and co-ownership in apartment buildings. The corresponding figure was approximately 40% for disputes concerning electricity, gas, and water supply, banking contracts, defamation, and service contracts. Mediation was conducted remotely in 44% of cases and in person in 45%. Where the parties participated at the first meeting, settlements were reached in 32.8% of cases, compared with 30.4% in 2023, 28.9% in 2022, and an average of 28.2% in 2019–2021. Where the parties continued beyond the first meeting, the success rate rose to 54%.³⁷

³⁷ General Department for Statistics and Organizational Analysis (DGSTAT) of the Ministry of Justice. Civil Mediation ex D.L. 28/2010, 1 January–31 December 2024. June 2025.

564. One author reports that court-ordered mediations increased from 3% of all mediation procedures in 2012 to 8% in 2014, 11% in 2016, 14% in 2018, 12% in 2020, and 16% in 2022.³⁸

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

565. Higher-court decisions exist, including the Constitutional Court's position on including mediation within the public legal-aid system, discussed below. The legislation is, however, relatively recent and detailed, and no general judicial guidelines have yet developed.

(c) What is the judiciary's attitude towards mediation? What concerns or difficulties do judges identify?

566. It has been observed that, in 2010–2012, judges regarded mediation favourably but somewhat dismissively. Concerns included mediation methods that did not guarantee protection of constitutional rights and the fact that cases resolved through mediation were not counted towards judges' workloads. Judicial attitudes began to change in 2013, partly because of projects promoting mediation in individual courts, including Milan, Florence in cooperation with a university, and Modugno–Bari.
567. Article 5-quinquies of DL No. 28 provides that attendance at training events and the number and quality of cases resolved through mediation or settlement are indicators of judicial performance. Separate statistical reporting is maintained on orders referring cases to mediation and on cases concluded in that manner. Article 5-quinquies(4) states: "Without creating new or additional costs for the State budget, the head of a judicial office may promote cooperation projects with universities, bar associations, mediation organizations, educational institutions, and other professional and sectoral organizations and associations, with due regard for their mutual autonomy, in order to promote the use of court-ordered mediation and training in that field."

(d) How active is the mediation community in cooperating with courts?

568. There is interest and active cooperation, partly because some procedures are mandatory.
569. Lawyers have, in turn, received certain benefits: representation by lawyers is mandatory in mandatory procedures, and lawyers are subject to less demanding requirements for obtaining mediator status.

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

570. Under Article 1(b) of DL No. 28, a mediator is one or more persons who conduct mediation individually or jointly and who, in any event, have no authority to issue decisions binding on recipients of the service.
571. Mediators must be affiliated with an organization or entity that meets prescribed requirements and is entered in a special register maintained by the Ministry of Justice

³⁸ Matteucci, G. (2024). Civil process and mediation in Italy, 2024: *lus dicere et litem componere, Italiae usus*. *Beijing Law Review*, 15(3), 1347–1366, at p. 1360.

(Article 16 of DL No. 28). Lawyers entered in the relevant register may also act as mediators (Article 16(4-bis)).

572. A separate register exists for family mediators, who are subject to specific educational requirements.

573. Educational requirements for mediator candidates are as follows: (i) a university degree in law is not mandatory; candidates may hold a master's degree or a bachelor's degree combined with membership of a professional association; (ii) candidates must complete a specialized course at an educational institution certified by the Ministry of Justice – 80 hours for candidates with legal training and 94 hours for candidates with other qualifications; and (iii) lawyers are required to complete fewer hours and are exempt from the theoretical examination on legislation. DM No. 150 sets out the training programme, requirements, and duration in detail.

574. DM No. 150 also sets out requirements for organizations seeking registration. An organization must confirm, among other things, that its members, management, and mediators are fit and proper: they must not be subject to legal prohibition, lack legal capacity, have convictions for serious offences, or have received specified disciplinary sanctions. They must also refrain from providing services where conflict of interest arises. The organization must demonstrate its operational capacity, including share capital of at least EUR 10,000, insurance, and at least five mediators. A simplified procedure applies to organizations forming part of professional associations or registered with chambers of commerce. Detailed requirements govern organization, activities, reporting, and removal from the register.

575. Applications to a mediation entity are also governed by territorial criteria linked to the territorial jurisdiction of the court hearing, or potentially competent to hear, the case.

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

576. No such statutory requirement applies.

(c) What requirements must a mediator meet in order to participate in court proceedings, and may the parties or the court impose additional requirements?

577. Article 22 of DM No. 150 requires each organization's rules to allow the parties jointly to select a mediator from the organization's list and to establish criteria for allocating mediation cases, taking account of the mediator's specific expertise and the need for rotation where the parties have not jointly selected a mediator.

(d) Are mediators specialized by category of case, and how is such specialization regulated?

578. No information was identified, apart from family disputes. This issue appears to be regulated by the rules of mediation organizations.

(e) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

579. The mediator acts as an independent neutral intermediary.

(f) Are mediator's rights and duties laid down in procedural law?

580. A mediator's work is primarily regulated by the mediation organization with which the mediator is affiliated.

581. Article 14 of DL No. 28 establishes the following duties of mediators:

- mediators and their assistants may not assume rights or obligations directly or indirectly connected with the matters under consideration, except those directly related to the provision of services, and may not receive remuneration directly from the parties;
- the mediator must also:
 - sign, in each case to which the mediator is appointed, a declaration of independence and impartiality in the form prescribed by the applicable procedural rules and undertake any additional obligations prescribed by those rules;
 - immediately disclose to the head of the entity and the parties any circumstances arising during the procedure that may affect the mediator's independence or impartiality;
 - formulate settlement proposals within the limits imposed by public policy and mandatory rules;
 - respond promptly to all organizational requests from the head of the entity.
- At a party's request, the head of the entity arranges replacement of the mediator. The organization's rules allocate decision-making powers in relation to such a request where the mediation is conducted by the head of the entity.

(g) For what may a mediator be held liable?

582. The mediator is primarily accountable to the mediation organization with which the mediator is affiliated, because breaches may result in the organization's removal from the register maintained by the Ministry of Justice.

(h) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

583. No information was identified.

(i) How is the mediator's remuneration paid, and by whom?

584. Mediation fees are paid to the mediation organization and depend on the value of the dispute. Mediators may not receive remuneration directly from the parties but receive a proportion of the organization's fee.

585. Secondary legislation establishes fees for the first meeting (Article 28 of DM No. 150) and rates applicable to public mediation organizations. It also establishes basic pricing rules for private organizations, whose rates are approved by the Ministry of Justice (Articles 29–31 of DM No. 150).

586. Article 34 of DM No. 150 provides:

- the costs specified in Article 28 for the first meeting are payable by each party when the mediation request is submitted and accepted, respectively;

- if the first meeting results in conciliation and the mediation procedure continues, each party must pay the additional mediation costs;
- the parties are jointly and severally liable to the organization for any additional mediation costs where conciliation is achieved or meetings continue after the first meeting;
- where several parties share a common interest, the head of the organization treats them as one party for the purpose of determining liability for mediation costs.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties proceed to mediation?

587. A court may order mediation under Article 5-quater of DL No. 28 at first instance or on appeal before the hearing for submission of the case for decision, that is, before a determination on the merits; until 25 January 2025, the cut-off point was the stage at which the parties' positions were finalized. Having assessed the nature of the case, the state of the proceedings, the parties' conduct, and other circumstances, the court may issue a reasoned order directing mediation. Mediation then becomes a condition for the continuation of the case.

(b) May mediation be used after a dispute has been brought before a court?

588. No information was identified concerning mediation upon the parties' application. Nor was any prohibition on voluntary mediation identified.
589. The available sources on court-related mediation focus on mandatory pre-litigation mediation and court-ordered mediation.
590. Court-ordered mediation was recommendatory in 2010, although an unreasonable refusal or failure to participate could have adverse consequences for a party. Since 2013, courts have been able to order mediation on their own initiative.
591. No information was identified concerning the possibility of appealing an order directing mediation.

(c) Must a judge invite or refer the parties to mediation upon a party's application or on the court's own initiative? If so, at what stage and in what procedural form? May an order referring to the case to mediation be appealed?

592. See above.

(d) Does a mediation agreement stay court proceedings, automatically or only upon a party's application? Does the agreement interrupt the limitation period?

593. The period for which court proceedings are adjourned for mediation is excluded when assessing whether the proceedings have been completed within a reasonable time (Article 7 of DL No. 28).
594. Notification to the parties by the mediation entity that mediation is to take place interrupts the limitation period (Article 8(4) of DL No. 28).

(e) Are there any special requirements applicable to mediation connected with court proceedings?

595. The parties must be assisted by lawyers in mandatory pre-litigation mediation and court-ordered mediation (Article 8(5) of DL No. 28).

596. In ordinary mandatory mediation, the parties must attend in person, although a representative may attend for a party where justified reasons exist (Article 8(4) of DL No. 28).

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by submitting the final settlement?

597. No.

(g) Is a mediator prohibited from expressing evaluative views, providing legal advice, or proposing settlement options?

598. The mediator makes a settlement proposal if the parties jointly request one. If no agreement is reached, the mediator may also formulate a proposal to be attached to the record of the mediation (Article 11(1) of DL No. 28).

599. The settlement proposal is formulated and sent to the parties in writing. Within seven days after notification, or within a longer period specified by the mediator, the parties must notify the mediator in writing whether they accept or reject it. Failure to respond within the prescribed period is treated as rejection. Unless the parties agree otherwise, the proposal may not refer to statements made or information obtained during the procedure (Article 11(2) of DL No. 28). See the consequences discussed in the section on sanctions for refusal to mediate, including voluntary mediation.¹⁰⁴

7. Procedural Aspects of Interaction Between Courts and Mediation

(a) Are dedicated mediation facilities available in courthouses?

600. No. Mediation is conducted by mediation entities at the place specified in their rules or at another place agreed by the parties, the mediator, and the head of the organization.

601. The law permits mediation entities established by bar councils to use premises made available by the president of the court (Article 18(1) of DL No. 28), although no information on such practice was identified.

(b) Are there approved regulations or rules governing court-related mediation?

602. Subject to Article 8 of DL No. 28, the mediation process is governed by the organization selected by the parties (Article 3(1) of DL No. 28). Each organization adopts its own rules, the mandatory content of which is prescribed by Article 22 of DM No. 150.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

603. Mediation lasts six months and may be extended in three-month increments (Article 6(1) of DL No. 28). Mandatory mediation, whether pre-litigation or court-ordered, may be extended only once (Article 6(2)). The period runs from the date on which the mediation application is filed or, for court-ordered mediation, from the date of the order. In court-ordered mediation, the parties notify the court of an extension by filing a written agreement or a record evidencing the extension.

604. The literature indicates that the average duration of mediation, without distinguishing between types, increased from 65 days in 2012 to 186 days in 2022.³⁹

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act following approval?

605. A mediation settlement is contractual in nature. Where the settlement requires the parties to enter into a contract or perform an act listed in Article 2643 of the Civil Code, concerning transactions in immovable property, the signatures on the settlement must be authenticated by an authorized public official for registration purposes. A settlement, including one based on a mediator's proposal, may provide for payment of a sum for each breach, failure to fulfil an obligation, or delay in performance (Article 11(7) of DL No. 28).

(b) Must a court approve a mediation settlement as a court settlement if it is lawful, or is approval discretionary?

606. No; this is not applicable.

(c) On what grounds may a court refuse to approve a settlement? Does the court review its substantive legality?

607. See above.

(d) How is the settlement enforced (notarial writ of execution, simplified court approval, or an action for damages)? What consequences may follow from non-compliance, such as judicial fines?

608. Article 12 of DL No. 28 distinguishes between the following situations:

- where all parties are represented by lawyers, the settlement signed by the parties and their lawyers in the mediator's presence is enforceable for compulsory seizure, delivery or surrender, specific performance or restraint, and registration of a judicial mortgage. The lawyers certify the authenticity of the signatures and the settlement's compliance with mandatory rules and public policy. The settlement must include the enforcement wording and information required by Article 480(2) of the Italian Code of Civil Procedure;
- where not all parties are represented by lawyers, or where the settlement concerns other matters, the settlement attached to the record is approved, upon a party's application, by order of the president of the court for the place where the mediation entity is located. The court reviews formal regularity and compliance with mandatory rules and public policy. The settlement thereby becomes enforceable.

9. Incentives and Barriers to the Use of Mediation in Court

(a) Are the costs of pre-litigation mediation treated as legal costs and recoverable from the losing party?

609. See below.

³⁹ Matteucci, G. (2025). Mandatory mediation, the Italian experience, a case study–2025. *Beijing Law Review*, 16(1), p. 353–376.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

610. Article 13 of DL No. 28 provides the following consequences where a party rejects a settlement proposed in voluntary or mandatory mediation.
611. Where the judgment fully corresponds to the proposal, the judge excludes recovery of the successful party's costs incurred after the proposal was made, orders that party to reimburse the unsuccessful party's costs for the same period, and orders payment to the State of an additional amount equal to the unified court fee. These rules also apply to the mediator's remuneration and the remuneration of any expert involved in the mediation.
612. Where the judgment does not fully correspond to the proposal, the judge may nevertheless, for serious and exceptional reasons, exclude recovery by the successful party of the mediator's and expert's fees. The reasons for the cost order must be expressly stated in the judgment.
613. Article 12-bis of DL No. 28 also establishes procedural and financial sanctions for failure to attend the first mediation meeting without justified reasons:
- procedural sanction: under Article 116 of the Italian Code of Civil Procedure, the judge may draw inferences from a party's refusal to participate in mediation and treat that conduct as a significant indicator in the overall assessment of the dispute;
 - financial sanction: where mediation is a condition for the continuation of court proceedings, a party that fails to attend the first mediation meeting without justified reasons must pay the State an amount equal to twice the unified court fee payable for the proceedings.
614. In the judgment determining the dispute, the judge may also, where appropriate, order the unsuccessful party that failed to attend the first mediation meeting to pay the opposing party an equitably determined amount not exceeding the maximum recoverable legal costs incurred after completion of the mediation.
615. According to the National Mediation Council, the following are not treated as justified reasons in practice:
- the view that the claim is unfounded;
 - reliance on ill health without a medical certificate; in May 2025, the Turin court rejected an argument based on "advanced age and illness";
 - challenging territorial competence during mediation rather than immediately upon receipt of the summons.
616. The following are treated as justified reasons:
- failure to receive, or late receipt of, the invitation to mediate;
 - an invitation that does not give the party sufficient time to prepare effectively or appoint a representative;
 - an objective legal inability to participate, for example, the commencement of insolvency proceedings suspending or limiting the party's powers, or legal incapacity that has not yet been remedied by appointment of a representative;
 - lack of passive standing, for example, where the invitation was sent to a namesake or another person different from the person identified by the applicant.

(c) Are tax or court-fee benefits available to parties that have used mediation?

617. Under Article 17 of DL No. 28, documents, instruments, and settlements produced in mediation are exempt from stamp duty and other charges. For example, under D. 2023, a settlement is exempt from registration tax up to EUR 100,000, and tax is payable only on excess.
618. Under Article 20 of DL No. 28, each party may claim a tax credit of up to EUR 600 if a settlement is reached. The credit reimburses all or part of the sums paid as mediation fees or mediator remuneration by deducting amounts paid to the mediation organization from tax due. It may also cover lawyers' fees where mediation was mandatory, whether pre-litigation or court-annexed. The credit is available to individuals and organizations. Although the maximum credit for one procedure is EUR 600, credits may be claimed for several procedures in one year, subject to an annual maximum of EUR 2,400 for individuals and EUR 24,000 for organizations. These amounts are reduced by half if no settlement is reached.
619. An additional credit of up to EUR 518 is available to a party that paid the unified court fee where mediation was ordered and the case was discontinued following a settlement, subject to the amount actually paid (Article 20 of DL No. 28).
620. Other legal services do not ordinarily qualify for a tax credit, although exceptions exist. The 2022 reform, whose provisions entered into force between 2023 and 2025, increased the credit from EUR 500 to EUR 600.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

621. The most recent reform, adopted in 2022–2025, introduced improvements including tax and other incentives. Mediation appears previously to have been regarded as expensive and underused, although the effects of the reforms have not yet been assessed conclusively.
622. Practitioners also identify subjective barriers, particularly an unwillingness to negotiate.

10. Other Issues

(a) Are there alternative conciliation procedures established by law, such as judicial conciliation or lawyer-assisted negotiation? How do they relate to mediation?

623. A judge-initiated conciliation procedure under Article 185-bis of the Code of Civil Procedure allows the judge to make a settlement proposal to the parties during the proceedings.
624. Lawyer-assisted negotiation (negoziazione assistita) is a special out-of-court procedure that may be voluntary or mandatory. It applies, among other matters, to claims for damage caused by vehicles and vessels, medical-negligence claims, and disputes concerning family agreements, provided that the rights concerned are capable of disposition (Decreto Legge 12 settembre 2014, n. 132, converted with amendments by Legge 10 novembre 2014, n. 162).
625. Neither procedure involves a mediator. Where a settlement proposal is made by a judge, it has been suggested that rejection does not preclude a subsequent referral to mandatory mediation.

(b) How has the country's historical context influenced the contemporary perception and institutionalization of mediation?

626. From 1865, Italy had “judicial conciliators” (*giudice conciliatore*), who operated at municipal level and were separate from the judicial system. Holders of this honorary office assisted the parties, upon request, in reaching an amicable solution and could also resolve minor disputes. “After the Second World War, a number of economic and social factors – particularly currency devaluation, which substantially reduced the number of cases within the conciliator’s jurisdiction – led to the gradual decline of the system.” In 1995, judicial conciliators were replaced by justices of the peace (*Giudice di pace*).⁴⁰
627. In the early 2000s, initial attempts at judicialization, including the “Pinto Law”, sought to reduce court caseloads and improve access to justice.⁴¹
628. Systematic reforms favoring mediation began in the 2010s following adoption of the relevant EU directive. There was uncertainty as to whether mandatory mediation had to be completed before proceedings could be brought before a justice of the peace, but it was ultimately held to be mandatory for specified categories of cases regardless of whether the competent court would later be a tribunal or a justice of the peace.
629. The most recent reform, which strengthened court-ordered mediation among other measures, was adopted in 2022 as the Cartabia Reform.

(c) What is the stated public-policy objective of developing mediation: reducing court caseloads, lowering parties’ costs, or maintaining international standing?

630. The National Mediation Council identifies the following advantages of court-ordered mediation:
- shorter duration: many mediations are completed within two to three months, unlike court proceedings that may last for years;
 - cost containment: costs are substantially lower than in court proceedings;
 - greater control over the outcome: the parties develop the settlement jointly and avoid unexpected results;
 - greater confidentiality: unlike court proceedings, mediation is confidential;
 - preservation of relationships: in family, condominium, or corporate relationships, a mutually acceptable settlement may preserve future relations.

(d) May a judge act as mediator?

631. No.

(e) May mediation form part of a legal-aid system? How are mediators remunerated in that case?

632. In Decision No. 10/2022, the Constitutional Court held that legal aid must also cover representation in mandatory mediation.

⁴⁰ See further: *AST: Giudice conciliatore*. (n.d.). [URL](#)

⁴¹ Maia, R. C. V. (2023). Mandatory mediation and assisted negotiation in Italy: An alternative to promote mediation in Brazil. *Revista da Faculdade de Direito da Universidade Federal de Minas Gerais*, 82, 261–290, at p. 265.

633. Lawyers' fees in mandatory pre-litigation mediation may be paid through the public legal-aid system (Article 15-bis(1) of DL No. 28).
634. In mandatory mediation, whether pre-litigation or court-ordered, a party eligible for public legal aid pays no fee to the mediation entity (Article 17(6) of DL No. 28). The mediation entity receives a corresponding tax credit (Article 20(4)).

(f) How are online platforms and digitalization changing traditional mediation practice?

635. Article 3(4) of DL No. 28 provides that mediation may be conducted remotely. Article 8-bis states that remote mediation requires the parties' consent and must comply with the Digital Administration Code and other applicable rules. The mediator has a leading role in preparing the record of the online session, drawing up instruments, and collecting signatures.
636. Article 8-ter provides that any party may request the mediation organization to participate remotely.
637. The rules of every mediation entity must contain corresponding provisions.

VIII. France

1. Principal Legislation and Other Instruments. Terms and Abbreviations

- 1995 Act – Act No. 95-125 of 8 February 1995 on the Organization of Courts and Civil, Criminal, and Administrative Procedure (Loi n° 95-125 du 8 février 1995 relative à l'organisation des juridictions et à la procédure civile, pénale et administrative);
- 1991 Act – Act No. 91-647 of 10 July 1991 on Legal Aid (Loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique);
- CPC – Code of Civil Procedure (Code de la procédure civile);
- C. Civ. – Civil Code (Code civil);
- EU Directive – Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (Directive no 2008/52/CE du Parlement européen et du Conseil du 21 mai 2008 sur certains aspects de la médiation en matière civile et commerciale);
- Cass. Civ. – Cour de cassation, chambre civile (decision of a civil chamber of the Court of Cassation, the highest court in civil matters);
- Cass. Soc. – Cour de cassation, chambre sociale (decision of the Social Chamber of the Court of Cassation);
- CE – Conseil d'État (Council of State, the highest court in administrative matters).
- Code of Ethics for Mediators – Code de déontologie du médiateur (adopted by a meeting of mediators in 2021, as amended).

2. Concept and Principles of Mediation

(a) Understanding of mediation in the jurisdiction under review

638. Under Article 21 of the 1995 Act, mediation is any structured process, whatever it is called, whereby two or more parties attempt, with the help of a third party – the mediator – chosen by them or appointed, with their consent, by the judge seised of the dispute, to reach an agreement for the amicable settlement of their dispute.
639. Mediation is one of several methods of dispute resolution. Commentators note the difficulty of distinguishing mediation from conciliation and have proposed various criteria for doing so. Put simply, conciliation is the older of the two and is usually conducted free of charge by the judge or a judicial conciliator, whereas mediation is a more recent procedure conducted, for a fee, by an independent third party.
640. Within court proceedings, mediation may be either “ordinary”, initiated at the parties’ request, or “judicial”, ordered by the judge with the parties’ consent.
641. A number of principles apply to all amicable dispute-resolution procedures and to both forms of mediation, although certain differences are discussed below.
642. In 2023, the National Mediation Council refined the definition of mediation:
- “Mediation is a voluntary and cooperative process in which, through confidential discussions assisted by one or more third parties—the mediator or mediators—persons

attempt to establish or restore relations, prevent a conflict, or settle it amicably. A mediator is an independent and impartial third party, trained in mediation and without decision-making authority, who facilitates communication between the participants.”⁴²

(b) Are the principles of voluntariness, confidentiality, and neutrality established by law?

643. The principle of voluntariness follows from the definition of mediation, which centres on the parties' own efforts to reach an amicable settlement. When Article 3 of the EU Directive was transposed, the word “voluntarily” was dropped, but this does not change the substance of the mechanism, since French law is read in the light of the Directive.

644. Two qualifications should nevertheless be noted:

- in some cases, mediation and other amicable settlement procedures form part of a mandatory pre-litigation process. In such cases, failure to include the relevant information in the statement of claim results in inadmissibility under Articles 54 and 750-1 CPC;
- under Article 22-1 of the 1995 Act, as amended in 2019, and Article 1533 CPC, a court may at any stage, without the parties' consent, refer them to an information meeting with a court-appointed mediator where the court considers that an amicable solution may be possible. Attendance at that information meeting is therefore not voluntary (see below).

645. All mediators and conciliators must satisfy requirements of neutrality and impartiality:

- neutrality and impartiality (Article 21-2 of the 1995 Act and Article 1530-3 CPC);
- diligence (Article 1530-3 CPC);
- competence (Article 1530-3 CPC).

646. A general principle of confidentiality applies to all procedures under Article 21-3 of the 1995 Act:

“Unless otherwise agreed by the parties, mediation is confidential.

Findings made by the mediator and statements obtained during mediation may not be disclosed to third parties or used or produced in any judicial or arbitral proceedings without the parties' consent.”

647. With effect from 1 September 2025, Article 1528-3 CPC was clarified (see **para. 744**):

“Unless otherwise provided by the parties, everything said, written, or done during a mediation session is confidential.

Unless the parties agree otherwise, confidentiality applies to documents prepared during the amicable dispute-resolution procedure.

Documents produced at a mediation session are not confidential.”

⁴² Charte de la médiation pour les entreprises et les organisations; see Conseil national de la médiation, 75 recommandations pour une médiation de qualité, Rapport de fin de mandat du Conseil national de la médiation, June 2023–April 2026, at p. 74.

[c] What are the limits of confidentiality? May negotiations be relied on in court?

648. Article 21-3 of the 1995 Act and Article 1528-3 CPC originally provided for two exceptions to the confidentiality principle and the ban on disclosing information obtained during mediation:
- where overriding reasons relating to public policy, protection of the child's interests, or protection of a person's physical or psychological integrity exist;
 - where disclosure of the existence or content of a settlement reached through mediation is necessary for its implementation or enforcement.
649. Following the amendments effective from 1 September 2025, documents prepared during mediation are generally confidential, although the parties may agree otherwise. The parties may, however, rely on evidence produced during mediation, such as expert reports. This codified a position already established in legal writing and case law. In one case before the Conseil d'État (CE, avis, 14 nov. 2023, req. no 475648), the court held that, although confidentiality applies to all mediation participants, "documents containing factual findings or technical analysis prepared by an independent expert at the mediator's request or on the parties' initiative during mediation may be produced in court".⁴³
650. Confidentiality is not mandatory, and the parties may agree otherwise.⁴⁴
651. A breach of confidentiality may give rise to two types of consequence:
- a procedural measure excluding evidence produced in breach of confidentiality (Cass. civ. 2e, 9 juin 2022, no 19-21.798);
 - civil, criminal, or disciplinary liability.
652. Case law also shows that, where a party has no other means of producing evidence without breaching confidentiality, the court will assess whether admitting the evidence is proportionate (Cass. civ. 1re, 5 avr. 2012, no 11-14.177).
653. As explained below (**para. 675**), procedural law authorizes a court-appointed mediator to inform the court of any difficulties encountered, and of the status of the mediation, including whether it has succeeded or ended without success.

[d] Is legality established as a condition for a mediation settlement?

654. If the parties seek court approval of the settlement for enforcement purposes, the court reviews its legality through homologation (see below).
655. The law does not establish legality as a specific requirement, but the general rules on contracts apply to the settlement.

⁴³ Calmettes, C. (2025). MARD – Modes amiables de règlement des différends. *Répertoire Dalloz Procédure civile*, § 182.

⁴⁴ Ibid.

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What disputes does mediation cover – civil, commercial, employment, administrative, and other disputes – and are there any exclusions?

656. Mediation is available in virtually all disputes except criminal proceedings, although separate mechanisms exist in criminal matters; these fall outside the scope of this study.
657. Judicial mediation is available in all matters concerning rights of which the parties may dispose (Article 1528-2 CPC and Article 21-4 of the 1995 Act; this wording may be compared with the reference to mandatory rules in Article 422 of the Russian Civil Code).
658. Government guidance recommends mediation for “everyday conflicts”, including disputes between neighbours, residential tenancy disputes, consumer matters, family matters other than those involving physical or psychological violence, and commercial disputes between counterparties or business partners.⁴⁵

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

659. Although no statistics are available, commentators note the limited use of judicial mediation in France and suggest that it is particularly suitable for certain categories of cases.⁴⁶

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

660. There is case law on various issues, including decisions of the highest courts.

(c) What is the judiciary’s attitude towards mediation? What concerns or difficulties do judges identify?

661. No judicial survey was available, and no relevant empirical studies were identified. The First President of the Court of Cassation, the highest court in civil and commercial matters, has nevertheless stated that the introduction of mediation forms part of a broader new approach to justice (see **para. 744**).
662. Specialist commentary also raises concern that the sheer number and diversity of alternative dispute-resolution mechanisms may confuse potential users and make them less attractive than court proceedings. The 2025 reform was partly intended to unify and simplify the rules governing amicable dispute resolution.⁴⁷

(d) How active is the mediation community in cooperating with courts?

663. No data were identified.

⁴⁵ See further: *Médiateur civil*. (2025). Service Public. [URL](#)

⁴⁶ Strickler, Y. (2024). Modes alternatifs de résolution des litiges – Généralités. *JurisClasseur Procédure civile* (fasc. 1700-75), § 12.2.

⁴⁷ Calmettes, C. MARD – Modes amiables de règlement des différends, § 4.

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

664. No special requirements apply to mediators, except court-appointed family mediators, because mediation is regarded not as a profession but as a function, or task, carried out by a person with the appropriate competence.
665. Special conditions apply to family mediators, who must hold a State-recognized diploma under Article R. 451-66 et seq. of the Social Action and Families Code.
666. Under Article 1530-2 CPC, formerly Article 131-5, the following conditions apply where a mediator is appointed by the court:
- the mediator may be a natural or legal person. Where a legal person is appointed, its legal representative proposes one or more natural persons for the judge's approval to carry out the assignment in its name;
 - a natural person must satisfy the following requirements:
 - good character, including no relevant criminal conviction, legal incapacity, deprivation of rights, or dishonest, disreputable, or immoral conduct subject to specified disciplinary or administrative sanctions;
 - appropriate competence and knowledge, evidenced by information on the training or experience needed to conduct mediation. In judicial mediation, the person must also possess, by reason of past experience or present activity, the qualifications required by the nature of the dispute;
 - sufficient guarantees of independence to practise mediation.
667. Regional registers of mediators are maintained by each court of appeal according to statutory and regulatory criteria. Commentators note case law holding that registration cannot be refused simply because a mediator is unfamiliar with the region or charges higher fees on account of distance. The register is compiled by an assembly of judges in the relevant appellate district, who assess candidates' qualifications and experience. A refusal must give reasons. The list is renewed every three years and is informative rather than exhaustive: it gives registered mediators no monopoly, since the parties remain free to choose other mediators. Upon first registration, mediators take the following oath before the court of appeal: "I swear to perform my duties as mediator with honour and conscience, and neither to disclose nor use anything that comes to my knowledge in the performance of those duties."⁴⁸
668. France has no uniform educational standard for mediators. Various diplomas and training programmes exist, and mediation organizations establish their own rules. The National Mediation Council is working to clarify the basic training required to perform the mediator's function.

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

669. The law does not require a university degree in law.

⁴⁸ Ibid., § 200.

(c) What requirements must a mediator meet to participate in court proceedings, and may the parties or the court impose additional requirements?

670. As noted above, a court-appointed mediator must have experience relevant to the subject matter of the dispute. The parties remain free to choose a mediator with a particular specialization.

(d) Are mediators specialized by category of case, and how is such specialization regulated?

671. Only family-mediator specialization is expressly regulated by legislation (see above).

(e) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

672. The mediator acts as an independent neutral intermediary.

(f) Are a mediator's rights and duties laid down in procedural law?

673. Yes. For example, the mediator informs the judge if a party fails to attend an information meeting under Article 1533-3 CPC and promptly notifies the court of acceptance of the judicial-mediation appointment under Article 1534-3(2). The mediator may ask the judge to extend the mediation period under Article 1534-4. Article 1535 provides that, after receiving the advance payment, the mediator schedules meetings and determines their sequence, time, and place. The mediator cannot compel the production of evidence but may, with the parties' consent, inspect premises or hear witnesses where this is useful and those people also consent (Article 1535-1).

674. The court does not withdraw entirely from the case and retains power to take necessary procedural measures. For example, a party may apply to the court for evidence-taking measures or interim and protective measures under Article 1535-3 CPC.

675. Under Article 1535-4 CPC, the mediator informs the court of difficulties encountered in carrying out the assignment and informs the judge whether mediation succeeded or failed. These duties do not breach confidentiality because the mediator reports only the status of the mediation.

676. Under Article 1535-5 CPC, the judge may terminate mediation at any time upon a party's application or on the mediator's initiative. The court may also terminate mediation on its own initiative if it appears unlikely to succeed, or if the dispute has become academic. The case is then listed for hearing.

(g) For what may a mediator be held liable?

677. The Code of Ethics for Mediators sets out the following duties:

- the mediator is not responsible for the outcome of mediation and owes no obligation to achieve a result;
- the mediator must ensure the orderly and amicable conduct of the mediation process;
- the mediator must inform participants that they may consult an appropriate professional; if the mediator doubts the feasibility or fairness of a settlement, or identifies a risk of a breach of public policy, the mediator should expressly recommend that participants seek specialist advice;

- the mediator must help participants who disclosed information in private sessions to pass it on where they consider this necessary for the mediation to progress;
- the mediator must not have incurred specified administrative liability incompatible with the function;
- failure to comply with the Code of Ethics may result in removal from the register of the organization or association to which the mediator belongs.

(h) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

678. Yes. The mediator may apply to the court to terminate the mediation. Court proceedings then resume and a hearing is scheduled. The court determines the consequences under the general rules.

(i) How is the mediator's remuneration paid, and by whom?

679. In ordinary mediation, the parties and the mediator agree the remuneration. The party with the greatest interest in the dispute may bear all the costs. Mediation costs may also be covered by legal-protection insurance, which is often included in home or civil-liability insurance.

680. No fixed amounts apply to judicial mediation either.

681. When ordering judicial mediation and appointing the mediator, the judge determines the amount of the advance, the deadline for payment, the party or parties required to transfer the funds, and, where several parties are involved, the proportion payable by each (Article 1534-1 CPC).

682. The advance must be as close as possible to the anticipated remuneration (Article 1534-3 CPC). After notifying the judge of acceptance, the mediator provides the parties with payment details.

683. If the mediator does not receive the full advance within the prescribed period, the order appointing the mediator ceases to have effect and the proceedings continue (Article 1534-3(3) CPC).

684. The mediator's final remuneration is agreed with the parties at the conclusion of the assignment (Article 1535-6 CPC). The remuneration agreement itself may be submitted to the court for approval and enforcement under Article 1543 CPC.

685. If the parties do not agree, the court determines the amount of remuneration.

686. If the remuneration exceeds the advance, the court determines the additional payment and the party or parties liable to pay it.

687. If the court proposes to award less than the amount requested by the mediator, the mediator is invited to make submissions. Where necessary, the mediator returns to the parties the difference between the advance and the remuneration awarded.

688. The court's order is issued to the mediator for enforcement purposes.

689. Case law indicates that the amount of the mediator's remuneration may not depend on whether the parties reached a settlement.⁴⁹
690. Mediation costs are allocated by agreement between the parties. In the absence of agreement, they are shared equally, unless the court considers equal division unfair considering the parties' financial circumstances (Article 22-2 of the 1995 Act).

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties move to mediation?

691. The parties may move to mediation at any stage of court proceedings and at any level of jurisdiction, including cassation proceedings (Article 1012 CPC).

(b) May mediation be used after a dispute has been brought before a court?

692. Yes. The parties may use either ordinary mediation or judicial mediation.

(c) Must a judge propose mediation or refer the parties to mediation upon a party's application or on the judge's own initiative? If so, at what stage and in what procedural form? May an order directing the parties to mediation be appealed?

Information meeting (Article 1533 CPC)

693. At any stage of the proceedings, the judge may require the parties to attend an information meeting with a mediator, who explains the purpose and conduct of mediation. The court sets the period within which the meeting must take place.
694. The parties may attend the meeting accompanied by representatives.
695. In the order directing the parties to an information meeting with a mediator, the court may also order mediation, provided that the mediator obtains the parties' consent.
696. The court may also delegate the decision to refer the parties to mediation to a justice attaché, who performs functions broadly comparable to those of a judicial assistant.
697. The confidentiality rules in Article 1528-3 CPC apply to the information meeting under Article 1533-1 CPC. However, information concerning a party's attendance or non-attendance is not confidential (Article 1533-1(2) CPC).
698. The mediator may decide to conduct the meeting online (Article 1533-2 CPC).
699. The mediator informs the judge if a party fails to attend the meeting. Failure to attend an information meeting without a valid reason may result in a judicial fine of up to EUR 10,000 (Article 1533-3 CPC).
700. An order referring the parties to an information meeting with a mediator is not appealable.

Referral to judicial mediation (Article 1534 CPC)

701. After obtaining the parties' consent, the judge may refer them to mediation. Mediation may concern the whole dispute or part of it.

⁴⁹ Ibid., § 222, citing Cour de cassation, 2e civ., 22 mars 2007, n° 06-11.790, Bull. civ. II, n° 73 (Fr.).

702. The order is not appealable.

Ordinary mediation (Article 1536 CPC)

703. The parties may agree to use mediation.

(d) Does an agreement to mediate stay court proceedings? If so, does it do so automatically or only upon a party's application? Does it suspend or interrupt the limitation period?

Limitation period (Article 2238 Civil Code)

704. The limitation period is suspended from the date on which, after the dispute has arisen, the parties decide to commence mediation or, in the absence of written agreement, from the date of the first mediation session.

705. The limitation period resumes for a period of not less than six months from the date on which one party, both parties, or the mediator declares that the mediation has ended. The court must be notified in writing.

Referral to judicial mediation (Article 1534 CPC)

706. An order directing judicial mediation interrupts the procedural time limit for the case for the duration of the mediation. French law does not prescribe a fixed overall duration for proceedings as such: proceedings may lapse only where the parties remain procedurally inactive for two years (péremption d'instance).

Ordinary mediation (Article 1536 CPC)

707. The court may stay proceedings where all parties apply for a stay and provide reasons, under the ordinary retrait de rôle procedure (Articles 1536-3, 382, and 383 CPC). The stay takes effect on the date of the parties' agreement or, in the absence of a written agreement, on the date of the first mediation session.

708. A new procedural period begins when one party, both parties, or the mediator declares that mediation has ended.

(e) Are there any special requirements applicable to mediation connected with court proceedings?

709. Yes. For example, only one court-appointed mediator may be appointed, whereas Article 1536-1 CPC expressly permits two mediators in ordinary mediation. A judicial mediator is appointed by the court with the parties' consent, while an ordinary mediator is selected by the parties.

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by providing the final settlement?

710. Yes, in judicial mediation. Under Article 1535-4 CPC, the mediator informs the court of any difficulties encountered in carrying out the assignment. The mediator also informs the judge whether mediation succeeded or failed.

(g) Is the mediator prohibited from expressing evaluative views, giving legal advice, or proposing possible solutions?

711. The legislation does not expressly prohibit evaluative comments, although the Code of Ethics for Mediators provides that a mediator may not give advice. The National Mediation Council nevertheless clarifies that, although a mediator has no power to decide the dispute, a mediator may put forward proposals to help the parties reach a settlement.⁵⁰

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Are dedicated mediation rooms available in courthouses?

712. No. Moreover, the mediator determines the place of mediation.

(b) Are there approved regulations or rules governing judicial mediation?

713. Yes. Such rules exist at the level of mediation organizations and associations.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

714. The duration is set by the judge under the 1995 Act, within statutory limits. Under Article 1534-4 CPC, the mediator's initial assignment may not exceed five months from the date on which the advance is transferred to the mediator's account.
715. The assignment may be extended by three months at the mediator's request.

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act after approval?

716. The general rules of contract law apply to the settlement (Article 1541 CPC and Article 1101 Civil Code).
717. A settlement may be concluded orally, although it may also be recorded in writing.
718. A settlement may take different forms: it may be signed by the parties, countersigned by their lawyers, embodied in a transaction or settlement record, or executed as an authenticated instrument, including before a notary.
719. No special formal requirements apply to judicial mediation.
720. Under Article 1535-7 CPC, a settlement reached through judicial mediation may be recorded in writing and signed by the parties. The mediator certifies that the settlement was reached through mediation; unlike a settlement reached through judicial conciliation, the mediator does not sign it together with the parties.

⁵⁰ Conseil national de la médiation, 75 recommandations pour une médiation de qualité, Rapport de fin de mandat du Conseil national de la médiation, juin 2023 - avril 2026, p. 27, and footnote 20.

(b) Must the court approve a mediation settlement as a court settlement if it complies with the law, or is approval discretionary?

721. The court is not required to approve the settlement, but its review of the substance is limited.
722. The parties may apply for judicial approval (homologation) of the settlement. The court then verifies that the subject matter is lawful and that the agreement is not contrary to public policy (Article 1544(1) CPC).
723. The court may not amend the terms of the agreement submitted to it (Article 1544(2) CPC); it must either approve the agreement in full or refuse approval in full.
724. A refusal must state reasons (Article 1545-1 CPC). A refusal may be appealed, except where it was issued by a court of appeal.
725. Where the court approves the settlement, an interested person may apply to that court to challenge the approval.
726. A judicial decision approving a settlement is not, by its nature, an adjudication of the dispute, but it enables the settlement to be enforced.

(c) On what grounds may the court refuse approval? Does it review the legality of the settlement on the merits?

727. See above: the subject matter must be lawful, and the agreement must not be contrary to public policy.

(d) How is the settlement enforced, for example, through a notarial enforcement clause, a simplified court-approval procedure, or an action for damages? What consequences may follow from non-performance, such as judicial fines?

728. The settlement is binding on the parties, and breach gives rise to contractual liability.
729. A settlement may be oral, but only a written settlement may be made enforceable through one of the following procedures:
- judicial approval under Article 1543 et seq. CPC. Both parties, or one of them, apply to the court hearing the case for approval of the settlement (Article 1545 CPC). The court then reviews its legality under Article 1544(1) CPC;
 - the court registry may also affix an enforcement formula to a document containing a mediation settlement countersigned by the lawyers of both parties (Article 1546 CPC).
730. A notarial enforcement clause may also be used (Article L. 111-3(4) of the Code of Civil Enforcement Procedures).

9. Incentives and Barriers to the Use of Mediation in Court Proceedings

(a) Are the costs of pre-litigation mediation treated as litigation costs and recoverable from the unsuccessful party?

731. No. The costs of both pre-litigation and judicial mediation are not litigation costs and may not be recovered from the unsuccessful party.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

732. No. A judicial fine is available only for an unjustified failure to attend an information meeting with a mediator (see **para. 693**).
733. In one rare decision, a court held, in an employment dispute, that an employer's refusal to take part in pre-litigation mediation with an employee amounted to a fault causing loss (Cass. Soc., 17 October 2012, No. 11-18.208; Calmettes, para. 241).

(c) Are tax benefits or court-fee incentives available to parties that use mediation?

734. No such benefits are provided.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

735. Practitioners and researchers note that the diversity of these procedures and the parties' limited knowledge of them create uncertainty.
736. In general, mediation is considered cheaper and faster than litigation in most cases.

10. Other Issues

(a) Are other conciliatory procedures established by law, such as judicial conciliation or lawyer-assisted negotiation? How do they relate to mediation?

737. Other forms of amicable dispute resolution are actively developing in France, although not all have proved successful:
- a mandatory preliminary conciliation stage applies to certain categories of civil disputes, including property claims below EUR 5,000 and various neighbourhood disputes. Article 750-1 CPC requires the parties to choose between a judicial conciliator, mediation, or the participatory procedure described below. Failure to comply renders the claim inadmissible. Similar procedures exist for other courts, including labour and agricultural-tenancy courts, and for particular categories of disputes, including wage, family, and sports disputes;
 - judicial conciliation (conciliation judiciaire, Chapter V CPC, formerly Article 129-2 et seq.): the president of the court appoints a person whom a party may approach before or during proceedings; with the parties' consent, the court delegates to that person the task of assisting negotiations aimed at an amicable settlement. The procedure lasts three months and may be extended once. It is unavailable in disputes with public authorities, family disputes, and criminal matters. There is no sanction for failure to attend; the parties may simply return to litigation. The conciliator informs the judge of the progress of negotiations. The judge retains power to take measures supporting the conciliator and may terminate the procedure on the judge's own initiative or at the request of a party or the conciliator. Although free of charge and still infrequently used, the procedure is developing. It includes the following forms:
 - the participatory procedure (procédure participative, Articles 2062–2068 Civil Code and Article 1538 et seq. CPC), introduced between 2010 and 2012, under which the parties and their lawyers seek an amicable solution or jointly prepare the case for trial, for example, by jointly commissioning expert evidence. It was modelled on a United States procedure and remains infrequently used;

- an amicable settlement hearing (audience de règlement amiable), introduced in 2023 and conducted by a judge who does not determine the merits, modelled on Canadian practice;
 - partial adjudication (césure), introduced in 2023 and modelled on German practice. The parties ask the court to determine a key issue, such as limitation or liability, and then refer them to negotiations on the remaining issues, such as the form or amount of relief.
738. The legislation does not define the relationship between these procedures. The procedure used therefore depends on the circumstances and the perceived effectiveness of the available mechanism.
739. There are also numerous out-of-court procedures established by private arrangements or legislation. For example, a commission resolves issues relating to employee inventions under Articles L. 611-7 and L. 615-21 of the Intellectual Property Code. It consists of employee and employer representatives and is chaired by a serving judge, whose vote prevails in the event of disagreement; statutory time limits also apply. Similar commissions deal with collective labour disputes, medical accidents, iatrogenic and hospital-acquired infections, and individual over-indebtedness. Certain sectors and public bodies also have designated mediators, such as the employment-service mediator, whose role resembles that of an ombudsman.

(b) How has the historical context of the jurisdiction affected the contemporary perception and institutionalization of mediation?

740. The first provisions on out-of-court and pre-litigation mediation were introduced into legislation and even into constitutional texts after the Revolution of 1789, to mark the new system's break with pre-revolutionary justice and to make dispute resolution cheaper and more flexible. A section on the special settlement contract was included in the Civil Code of 1804, reportedly at the courts' request. Interest in these procedures later waned, and thereafter they developed only in particular fields, such as employment, divorce, and agricultural tenancy, or for small disputes heard by lay justices of the peace, whose proceedings were free, confidential, and well suited to rural areas.
741. The new Code of Civil Procedure of 1975 introduced conciliation as part of the judge's mission. In practice, however, heavy caseloads and judges' working conditions made implementation difficult and encouraged the development of out-of-court amicable procedures.
742. A policy favouring alternative dispute resolution in court emerged in the mid-1990s. The 1995 Act was adopted under a Socialist government. Activity intensified in the 2020s around the modernization of justice, pursued by a progressive-centrist government under a new Minister of Justice who had previously been a prominent media lawyer.
743. The most recent major amendments to the CPC were introduced by Decree No. 2025-660 of 18 July 2025 and entered into force on 1 September 2025. They clarified cooperation between the parties in preparing cases for trial and introduced common rules for all forms of alternative dispute resolution.

(c) What official objectives are stated for the development of mediation: reducing court caseloads, lowering parties' costs, or supporting the State's international standing?

744. The principal justifications are:

- reducing court caseloads, as noted by all commentators;
- cost savings.⁵¹

745. The Minister of Justice has also referred⁵² to:

- rebuilding social ties and achieving lasting social peace;
- increasing the responsibility and autonomy of the parties.⁵³

746. The First President of the Court of Cassation has stated⁵⁴ that:

- judicial mediation reflects a new and modern conception of justice in which the judicial system assumes an overseeing role, assists negotiations, considers how outcomes will be implemented, protects the parties' future relationships, and helps preserve the social fabric.

(d) May a judge act as a mediator?

747. A judge may not act as a mediator (Article 1530-1 CPC) but may act as a conciliator or conduct an amicable settlement hearing.

(e) May mediation form part of the legal-aid system? If so, how is mediators' work funded?

748. Yes. Full or partial payment is available under the legal-aid system, taking account of the parties' financial circumstances:

- to cover part of the mediator's fees under Article 11-1(3) of the 1991 Act and Article 22-2(3) of the 1995 Act;
- to cover the fees of a lawyer assisting a legally aided party in ordinary or judicial mediation under Article 11-1 of the 1991 Act.

749. The conditions governing payment of mediators and lawyers under the legal-aid system are established by Decree No. 2020-1717 of 28 December 2020 implementing Law No. 91-647 of 10 July 1991 on legal aid and assistance by lawyers in non-judicial proceedings, as amended.

750. The Decree establishes a minimum payment for mediators where legal aid applies.

751. Under Article 99 of Decree No. 2020-1717, the State pays a specified amount to a court-appointed mediator upon submission of a report on the scope and significance of the work performed. Payment is also available for ordinary mediation where the parties submit the resulting settlement for court approval. In that case, the mediator's report contains the terms of the settlement.

752. Under Article 100 of Decree No. 2020-1717, where only one party is eligible for legal aid, the minimum remuneration is EUR 128 plus tax, and the maximum is EUR 256.

⁵¹ Strickler, Y. Modes alternatifs de résolution des litiges - Généralités, § 4. At the same time, an increase in financial support from the state is noted.

⁵² Dupond-Moretti, É. (2023). *Lancement de la politique de l'amicable* [Speech transcript]. Ministère de la Justice.

⁵³ Also emphasized by Calmettes, § 1.

⁵⁴ Canivet, G. (2002). Le juge et la recherche de la solution du conflit. *Semaine sociale Lamy*, (1100).

753. Where several parties are eligible for legal aid, those amounts are doubled.
754. The same Decree, in Article 86 and Annex 1, establishes rates and coefficients for the court-determined remuneration of lawyers representing legally aided parties: a base rate set in the annual budget is combined with a coefficient. The coefficient varies by category of dispute and may increase depending on the outcome of mediation, including whether mediation merely took place, resulted in a partial settlement, or produced a final settlement drafted by the lawyer.

(f) How do online platforms and digitalization affect traditional mediation practice?

755. Online out-of-court procedures, including conciliation and mediation, were introduced into the legislation on the modernization of justice with effect from 1 January 2021. The legislation sets requirements for protection of participants' personal data and confidentiality of communications, and reiterates that conciliators and mediators must act impartially, independently, competently, and diligently. It also provides for certification, and registers of mediators maintained by courts of appeal contain a separate category for online mediators.
756. Commentators observe that, although this legal framework improves the accessibility and effectiveness of mediation, it also raises questions concerning compliance with European Union law, the cost of registration on lists of online conciliators and mediators, and the complexity of the relevant texts.⁵⁵

⁵⁵ Calmettes, § 134, referring to Bléry, C., & Douville, T. (2021). Certification des services en ligne de conciliation, de médiation et d'arbitrage: déjà du nouveau... *Dalloz actualité*.

IX. Brazil

1. Principal Legislation and Other Instruments

757. Brazil's mediation system rests on a two-tier structure established by two principal statutes, which entered into force in 2015 and 2016 respectively. Their adoption marked the transition from experimental programmes to comprehensive State regulation of mediation.
758. The Mediation Act, Law No. 13,140 of 26 June 2015, which entered into force in December 2015, was Brazil's first statute devoted exclusively to mediation. It establishes the legal framework for two types of mediation: extrajudicial and judicial. The Act expressly permits mediation of disputes involving public authorities and State-owned or State-controlled companies (Article 1 and Chapter II), and regulates confidentiality, selection of mediators, procedure, and the legal status of mediation settlements in detail.
759. The new Code of Civil Procedure (CCP), Law No. 13,105 of 16 March 2015, entered into force on 17 March 2016 and integrated mediation directly into civil proceedings. Article 3 requires judges, prosecutors, lawyers, and public defenders to encourage mediation and other consensual methods. Under Article 334, immediately after admitting a claim and before the defendant submits a formal defence, the judge must schedule a mediation or conciliation hearing. Subject to limited exceptions, mediation thereby became a mandatory stage of civil proceedings.
760. Regulatory instruments of the National Council of Justice (Conselho Nacional de Justiça, CNJ):
- CNJ Resolution No. 125/2010 is the foundational instrument. Even before the 2015 legislation, it established the National Judicial Policy for the Appropriate Resolution of Conflicts, created Judicial Centres for Conflict Resolution and Citizenship (Centros Judiciários de Solução de Conflitos e Cidadania, **CEJUSCs**), and established mediator-training standards.
 - Subsequent resolutions of the higher courts, including the Superior Court of Justice (Superior Tribunal de Justiça, STJ), the Superior Labour Court (Tribunal Superior do Trabalho, TST), and the Federal Supreme Court (Supremo Tribunal Federal, STF), provided for specialized mediation centres within those courts.

2. General Concept of Mediation

(a) Understanding of mediation in the jurisdiction

761. Mediation is a technical activity carried out by an independent third party with no decision-making power who, once selected or accepted by the parties, assists and encourages them to identify or develop mutually acceptable solutions to the dispute (Article 1 of the Mediation Act).

(b) Are voluntariness, confidentiality, and neutrality established by law?

762. The Mediation Act expressly establishes these principles:
- Independence and impartiality of the mediator. Article 2(I) and Article 5 require mediators to disclose any circumstances capable of affecting their independence. The grounds for disqualification and recusal applicable to judges also apply to mediators.

- Party autonomy and voluntariness. Article 2(V) and Article 2(2) provide that no person may be compelled to remain in mediation. Participation is voluntary, and each party may terminate the procedure at any time. Even where a contract contains a mediation clause, the parties are required only to attend the first meeting (Article 2(1)).
- Confidentiality. Article 2(VII) and Chapter IV, Articles 30–31, impose strict confidentiality on all information relating to mediation. Generally, such information may not be used in subsequent arbitration or court proceedings.

[c] What are the limits of confidentiality? May mediation negotiations be relied on in court?

763. Information concerning the commission of an offence is not protected by confidentiality (Article 30(3)). Confidentiality may also be lifted where disclosure is necessary to enforce a settlement reached through mediation (Article 30).
764. Following mediation, the parties must supply the relevant information to the tax authorities, who are themselves required to keep it confidential (Article 30(4)).
765. Reliance in court on matters discussed during mediation is strictly prohibited. Evidence obtained in breach of confidentiality is inadmissible in arbitration or court proceedings (Article 30(2)). The mediator may not testify about facts learned in mediation (Article 7).

[d] Is legality established as a condition for a mediation settlement?

766. The Mediation Act distinguishes between two categories of rights and applies different approaches to legality:
- disposable rights (direitos disponíveis), which the parties may freely dispose of. A settlement concerning such rights constitutes an extrajudicial enforceable instrument;
 - non-disposable rights that admit settlement (direitos indisponíveis que admitem transação), including certain environmental and family rights. A settlement concerning such rights must be approved by a court with the participation of the Public Prosecutor's Office (Article 3(2)).

3. Scope of Mediation and Its Relationship with Court Proceedings

[a] What disputes does mediation cover: civil, commercial, employment, administrative, and other disputes?

767. Article 3 of the Mediation Act and the CCP establish a very broad scope: mediation is available for any dispute concerning disposable rights and non-disposable rights that admit settlement. In practice, this includes:
- civil and commercial disputes;
 - family disputes;
 - disputes involving the State. Chapter II expressly permits public authorities to use mediation in disputes among themselves and with private persons;
 - consumer disputes;
 - environmental disputes.

(b) Are any matters excluded, for example, disputes involving public interests?

768. Article 42 of the Mediation Act expressly excludes employment disputes and refers them to specialized labour legislation. The 2017 labour-law reform, Law No. 13,467/2017, introduced arbitration for highly paid employees, creating some uncertainty concerning mediation, but individual employment mediation remains outside the general statutory framework.
769. Article 852 of the Civil Code prohibits settlements concerning personal status, such as nationality, and strictly personal non-property family rights.

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

770. Brazil is one of the world's most litigious jurisdictions, with more than 83.8 million pending cases in 2023 and approximately 29 million new claims filed each year. The average duration of proceedings is about nine years in State courts and more than eleven years in federal courts. Mediation is therefore regarded as an important instrument for reducing court congestion. Justice in Numbers 2024 reports a settlement rate of approximately 20.9% for conciliation and mediation in first-instance courts. State courts report thousands of successful mediations, while the TST and STJ report savings amounting to millions or billions of Brazilian reais through consensual procedures.

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

771. Brazil belongs to the civil-law tradition. Decisions of the STJ and STF play an important role in unifying statutory interpretation, although they do not generally operate as binding precedent in the same manner as in the United States. The STF upheld the constitutionality of the Arbitration Act and thereby indirectly affirmed the legitimacy of alternative methods. The STJ actively shapes practice by approving settlements reached in its own CEJUSC and, it is reported, by upholding arbitral awards in most cases – demonstrating institutional support for alternative dispute resolution.
772. CNJ resolutions, including Resolution No. 125/2010, have regulatory force throughout the judicial system.

(c) What is the judiciary's attitude towards mediation? What concerns or difficulties do judges identify?

773. Judicial attitudes are generally positive, particularly since the 2015–2016 reforms. Article 139(V) CCP expressly requires judges to promote settlement. Judges actively refer cases to CEJUSCs. Nevertheless, a degree of cultural resistance remains among judges and lawyers accustomed to adversarial litigation and sceptical consensual methods.

(d) How active is the mediation community in cooperating with courts?

774. The mediation community is highly active and institutionalized. The STJ, TST, and STF have established their own mediation centres, including CEJUSC/STJ, CMC/STF, and NACOPP/TST, which resolve disputes within their jurisdiction, including complex public-sector and collective labour disputes. By 2023, 1,930 CEJUSCs had been established throughout Brazil. They form the principal link between courts and mediation. Mediators and conciliators are trained under uniform CNJ standards and registered with the courts.

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

775. The general requirements differ for judicial and extrajudicial mediators under Articles 9–11 of the Mediation Act.
776. Extrajudicial mediator. Any legally capable person trusted by the parties and capable of conducting mediation may act as an extrajudicial mediator (Article 9). Membership of an organization, special registration, and certification are not required. This reflects a deliberate legislative preference for flexibility and market-based regulation.
777. Judicial mediator. The requirements are stricter. A judicial mediator must:
- have legal capacity;
 - hold a university degree awarded at least two years before the application;
 - complete specialized mediator training at an accredited institution in accordance with CNJ requirements;
 - be entered in the register of judicial mediators maintained by the court in which the person intends to work (Article 12).

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

778. No law degree is required for an extrajudicial mediator.
779. A judicial mediator must hold a university degree, but the Act does not require a degree in law. Any higher-education qualification recognized by the Ministry of Education is sufficient.

(c) What requirements must a mediator meet to participate in court proceedings, and may the parties or the court impose additional requirements?

780. The CEJUSC system provides general training. In practice, and under internal centre regulations, cases may be allocated by specialization, for example, among public-law, private-law, and criminal-law chambers. Registers may identify a mediator's field of expertise.
781. The parties may select a private extrajudicial mediator and subsequently ask the court to approve the settlement. Selection is based entirely on the parties' confidence in the mediator.
782. A judge may not impose personal requirements beyond registration in the relevant register.

(d) Are mediators specialized by category of case, and how is such specialization regulated?

783. Article 11 of the Mediation Act and the CCP establish only basic requirements for judicial mediators. Although legislation does not prescribe subject-matter specialization, it develops in practice through the organization of CEJUSCs.
784. Large CEJUSCs may be divided internally into sectors or chambers. The CEJUSC of the STJ, for example, has specialized public law, private law, and criminal law chambers, allowing cases to be assigned to mediators with relevant training and experience.

785. Court registers may identify mediators' areas of practice or specialization. The CNJ also maintains a national register containing information on expertise, assisting judges and parties in selecting an appropriate mediator.
786. The CCP distinguishes mediation from conciliation. Mediation is recommended where the parties have, or previously had, an ongoing relationship, while conciliation is used where there is no prior relationship, as in many consumer disputes. Although primarily a distinction in technique, it produces a form of specialization between mediators and conciliators.
787. Major institutions, including CAMARB, maintain their own panels of mediators, although the parties may select a person outside the panel. Information on panel members' qualifications encourages specialization. In making an appointment, the parties and the institution are expected to consider the professional's qualifications and characteristics.
788. Institutional rules may permit a team of mediators, including a multidisciplinary team, to be appointed in particularly complex disputes.
789. Chapter II of the Mediation Act specifically regulates disputes involving the public sector. This is a distinct and specialized field requiring knowledge of public law, budgetary restrictions, and administrative procedures. Although no separate certificate is required, these disputes are generally handled by public bodies, such as the Chamber of Conciliation and Arbitration of the Federal Public Administration (CCAF), or by specialized lawyers.

(e) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

790. In Brazil, the mediator acts as a neutral facilitator and is neither a court assistant nor a representative of either party.

(f) Are mediator's rights and duties laid down in procedural law?

791. Articles 4–8 of the Mediation Act describe the mediator's rights and duties in detail. They include disclosure of conflicts of interest (Article 5), confidentiality (Article 30), a prohibition on acting as arbitrator or witness in the same dispute (Article 7), a one-year prohibition on representing either party after mediation (Article 6), and the right to remuneration.

(g) For what may a mediator be held liable?

792. A mediator may incur disciplinary liability for breach of statutory and judicial ethical rules. The most serious sanction is loss of mediator certification.
793. The Act does not grant general immunity from civil claims. A mediator may be liable for loss intentionally caused or resulting from gross negligence, including unlawful disclosure of confidential information. Article 8 treats the mediator as a public official for the purposes of criminal liability while carrying out mediation functions.

(h) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

794. A mediator may withdraw on the mediator's own initiative if impartiality cannot be maintained or for other personal reasons and must notify the parties.
795. A party may challenge a mediator who failed to disclose a conflict of interest (Article 5). A mediator may also be removed by the court or struck off the register for misconduct, terminating the mandate.

(i) How is the mediator's remuneration paid, and by whom?

796. In extrajudicial mediation, remuneration is determined by the parties' agreement and is usually divided equally unless they agree otherwise.
797. Court systems establish remuneration for judicial mediators, which may be paid by the parties. Judicial mediation must be free for people entitled to legal aid. As a condition of accreditation, private chambers registered with a court may be required to conduct a specified proportion of hearings without charge under Article 12-D of the CNJ Resolution.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties move to mediation?

798. Mediation is available at any stage. Article 139(V) CCP encourages judges to propose settlement at any time.
799. In addition, Article 334 CCP requires the judge, after admitting a claim, to schedule a mediation or conciliation hearing before the defendant files a defence.

(b) May mediation be used after a dispute has been brought before a court?

800. Yes. This is judicial mediation, which is conducted within the court through a CEJUSC or delegated to private mediators or institutions.

(c) Must a judge propose mediation or refer the parties to mediation upon a party's application or on the judge's own initiative? If so, at what stage and in what procedural form? May an order directing the parties to mediation be appealed?

801. As noted above, Article 334 CCP provides for a mandatory preliminary hearing. An exception applies where both parties state that they are not interested in mediation.

(d) Does an agreement to mediate stay court proceedings? If so, does it do so automatically or only upon a party's application? Does it suspend or interrupt the limitation period?

802. The court stays the proceedings for the duration of mediation under Article 16 of the Mediation Act.
803. The limitation period is suspended for the duration of the mediation procedure under Article 17 of the Mediation Act.

(e) Are there any special requirements applicable to mediation connected with court proceedings?

804. A judicial mediator must be registered in the relevant court register. Judicial mediation is also subject to a stricter time limit of 60 days, which may be extended by agreement of the parties under Article 28 of the Mediation Act.

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by providing the final settlement?

805. At the conclusion of the procedure, the mediator prepares a final record (termo final). If a settlement has been reached, it is submitted to the judge for approval. If not, the case returns to the court for continuation of the proceedings.

(g) Is the mediator prohibited from expressing evaluative views, giving legal advice, or proposing possible solutions?

806. A mediator may not provide legal advice or assess which party is legally correct. The mediator's role is to facilitate communication.
807. Unlike a conciliator, who may actively propose options, a mediator primarily helps the parties generate their own solutions. In practice, particularly in judicial mediation, the distinction may be less clear.

(h) How are the general principles of mediation implemented and safeguarded when mediation takes place during court proceedings?

808. Voluntariness is protected by the parties' right to terminate mediation at any time.
809. Neutrality is protected through disclosure obligations and procedures for challenging the mediator.
810. Confidentiality is protected by the statutory prohibition on using mediation information in court and the procedural sanction of inadmissibility.

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Are dedicated mediation rooms available in courthouses?

811. Specially equipped centres have been established in courts throughout the country, including rooms for joint and separate sessions.

(b) Are there approved regulations or rules governing judicial mediation?

812. Yes. They include the judicial-mediation provisions of the Mediation Act, the mediation provisions of the CCP, and detailed regulations adopted by the CNJ and individual courts for their CEJUSCs.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

813. Under Article 28 of the Mediation Act, judicial mediation must be completed within 60 days of the first session. The period may be extended by mutual agreement of the parties.

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act after approval?

814. Under Article 20 of the Mediation Act, a settlement reached by the parties is an extrajudicial enforceable instrument (título ejecutivo extrajudicial). If submitted to and approved by a judge, it becomes a judicial enforceable instrument (título ejecutivo judicial), providing stronger enforcement guarantees.

(b) Must the court approve a mediation settlement as a court settlement if it complies with the law, or is approval discretionary?

815. Where the settlement concerns disposable rights, the court reviews only formal requirements. Where it concerns non-disposable rights that admit settlement, court approval

and mandatory participation of the Public Prosecutor's Office are required to protect the public interest (Article 3(2)).

(c) On what grounds may the court refuse approval? Does it review the legality of the settlement on the merits?

816. Grounds for refusal include breach of law, such as an unlawful waiver of child support, incompatibility with public policy, and the absence of approval from the Public Prosecutor's Office where required.

(d) How is the settlement enforced, and what consequences may follow from non-performance?

817. If a party does not perform voluntarily, the other party may commence enforcement proceedings (*execução*), either in the same court where the settlement became a judicial title or based on the extrajudicial enforceable instrument.

9. Incentives and Barriers to the Use of Mediation in Court Proceedings

(a) Are the costs of pre-litigation mediation treated as litigation costs and recoverable from the unsuccessful party?

818. Article 22(2) of the Mediation Act creates a specific sanction: a party invited to extrajudicial mediation who fails to attend the first meeting, and who later loses court or arbitral proceedings concerning the same dispute, must pay 50% of the successful party's litigation costs. Otherwise, the costs of mediation are allocated by agreement. Where mediation forms part of court proceedings, its costs are generally allocated between the parties unless the court decides otherwise.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

819. As noted above, failure to attend the first extrajudicial mediation meeting, followed by an unsuccessful outcome in subsequent proceedings, entails liability for half of the successful party's litigation costs under Article 22(2).

(c) Are tax benefits or court-fee incentives available to parties that use mediation?

820. Under Article 29 of the Mediation Act, where a dispute is settled through judicial mediation before the defendant is formally served, no court costs are charged to the parties.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

821. Subjective and cultural barriers. The most significant obstacle is cultural resistance. The tradition of resolving disputes exclusively through courts, sometimes described as State paternalism, remains strong among both lawyers and the public. Many still regard mediation as a less prestigious way of resolving social conflict.
822. Organizational barriers. CEJUSC infrastructure is unevenly distributed. Wealthier southern and south-eastern States have many centres, while poorer northern and north-eastern States have too few. In some regions, including certain labour-court districts, no CEJUSC is available.
823. Economic barriers. Private mediation may be expensive for individuals and small businesses. Although judicial mediation may be free, private mediation remains a costly service.

10. Other Issues

(a) Are other conciliatory procedures established by law, and how do they relate to mediation?

824. In addition to mediation, Brazil recognizes:

- conciliation, used extensively, particularly in consumer and small-claims courts. A conciliator plays a more active role and may propose possible solutions;
- arbitration, widely used for major commercial disputes and regulated by Arbitration Act No. 9,307/1996;
- dispute boards, used in major long-term contracts, particularly in construction. The new Public Procurement Act, Law No. 14,133/2021, expressly permits their use in public procurement.

(b) How has the historical context of the jurisdiction affected the contemporary perception and institutionalization of mediation?

825. Professor Frank Sander's concept of the multi-door courthouse had a major influence. The 1988 Constitution guaranteed broad access to courts, contributing to congestion and creating an objective need for alternative dispute-resolution mechanisms.

(c) What official objectives are stated for the development of mediation?

826. The official objective stated in CNJ Resolution No. 125/2010 and the CCP is access to justice in the broad sense: access not merely to a court, but to appropriate resolution of conflict and social pacification. Reducing court congestion is important but secondary. The principal aim is to enable the parties to devise a solution that restores peace and, where possible, preserves their relationship.

(d) May a judge act as a mediator?

827. No. A serving judge may not mediate a case being heard by that judge. Judges may refer cases to CEJUSCs staffed by trained mediators who are not judges. A judge may manage the proceedings and encourage settlement but does not conduct the mediation.

(e) May mediation form part of the legal-aid system? If so, how is mediators' work funded?

828. Article 4(2) of the Mediation Act provides that mediation is free for persons in need. This is implemented through CEJUSCs, where mediators may work pro bono or be paid from the court budget. Private chambers accredited by courts may also be required to conduct free hearings.

(f) How do online platforms and digitalization affect traditional mediation practice?

829. Article 46 of the Mediation Act expressly permits mediation by internet or other remote means with the parties' consent. The CNJ actively promotes digital platforms. This has led to rapid growth in electronic-justice platforms, including ConciliarBR, and has made mediation more accessible. Mediation through electronic communications is now common practice.

X. England and Wales

1. Terms and Abbreviations

- ADR (alternative dispute resolution).
- CEDR (Centre for Effective Dispute Resolution).
- CMC (Civil Mediation Council).
- CPR (Civil Procedure Rules 1998).
- Without prejudice: the principle under which settlement negotiations may not be adduced in court as evidence.

2. General Concept of Mediation

(a) Understanding of mediation in the jurisdiction

830. In England and Wales, the Centre for Effective Dispute Resolution (CEDR) defines mediation as a dispute-resolution process in which a neutral intermediary, the mediator, works with parties in conflict and helps them conduct a structured dialogue aimed at reaching a negotiated agreement. It is an alternative to formal court proceedings. Its principal characteristics are confidentiality and the without-prejudice basis on which it is conducted.

(b) Are voluntariness, confidentiality, and neutrality established by law?

831. CEDR describes the mediator as an active but neutral intermediary, reflecting the principle of neutrality. Confidentiality is an inherent feature of the process, which is conducted on a confidential basis. As to voluntariness, although courts may require parties to attempt mediation, they cannot compel the parties to reach a settlement. The process remains voluntary in substance because success depends on the parties' willingness to agree.

(c) What are the limits of confidentiality? May mediation negotiations be relied on in court?

832. Mediation is conducted without prejudice. Accordingly, discussions and proposals made in mediation may not be disclosed in court or arbitration. This protection allows the parties to engage in open dialogue without concern that their statements will be used against them if negotiations fail. Exceptions arise only by agreement or in particular circumstances recognized by law, such as the prevention of crime.

(d) Is legality established as a condition for a mediation settlement?

833. Although mediation allows the parties to look beyond strict legal arguments and take commercial interests into account, the resulting settlement agreement is a contract. Like any contract, it must comply with the general principles of English contract law and may not

contravene mandatory law. Where a settlement is reached during litigation and embodied in a consent order or Tomlin order,⁵⁶ the court also exercises a degree of legal control.

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What disputes does mediation cover: civil, commercial, employment, administrative, and other disputes?

834. Mediation in England and Wales is available for civil and commercial disputes. Family, child-custody, and employment disputes have particular features but may also be mediated.

(b) Are any matters excluded, for example, disputes involving public interests?

835. There is no express exclusion for disputes involving public interests. *Halsey* nevertheless identifies categories that may be less suitable for mediation, including:

- cases requiring an authoritative precedent or determination of an important point of law;
- cases requiring urgent judicial relief, such as interim measures;
- serious allegations of fraud, although a civil-fraud dispute may still be mediated depending on the circumstances.

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

836. According to the CEDR Mediation Audit 2025, the mediation market in England and Wales handled approximately 21,000 cases in the year ending 30 September 2024, an increase of 24% from 17,000 cases in 2022. The market has fully recovered from the pandemic and continues to grow. The overall settlement rate remains high at 87%. Settlement is reached on the day of mediation in 70% of cases and shortly afterwards in a further 17%.

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

837. The principal authorities include:

- *Dunnett v Railtrack plc* [2002], which emphasized that mediation may generate solutions beyond the remedies available to a court;

⁵⁶ A Tomlin Order is a type of consent order used in England and Wales that stays legal proceedings on the basis of an agreement between the parties. It is commonly used in civil and commercial disputes, such as personal-injury and contractual claims. The order itself merely stays the proceedings; the terms of settlement are set out in a separate schedule, which operates as an ordinary private contract. The settlement terms—for example, the amount of the compromise payment—may remain confidential and need not be publicly available, unlike the terms of a standard consent order. If a party breaches the terms of the schedule, the other party cannot simply seek to have it punished for contempt of court. Since the schedule is contractual rather than an operative part of the court order, the appropriate mechanism is generally an application within the existing proceedings to give effect to or enforce the agreement, pursuant to the “permission to apply” provision; depending on the terms and circumstances, a separate claim for breach of contract may also be necessary. The parties may include terms that the court itself would not have jurisdiction to order, such as non-standard instalment arrangements or obligations involving third parties. A Tomlin Order usually provides that, if either party fails to perform its obligations on time, the other may return to court—without commencing fresh proceedings—to lift the stay, revive the proceedings to the necessary extent, and seek enforcement of the settlement.

- *Halsey v Milton Keynes General NHS Trust* [2004], which set out factors relevant to cost sanctions for refusal to use ADR;
- *Churchill v Merthyr Tydfil County Borough Council* [2023], in which the Court of Appeal held that a court may require parties to participate in ADR, including mediation, where doing so does not impair the essence of the right to a fair trial and is proportionate to the dispute;
- *DKH Retail Limited & ors v City Football Group Limited* [2024], the first application of the amended CPR in which the High Court made a compulsory mediation order.

(c) What is the judiciary's attitude towards mediation? What concerns or difficulties do judges identify?

838. The judiciary, supported by amendments to the CPR, actively endorses mediation as a means of furthering the overriding objective of dealing with cases justly and at proportionate cost. Concerns about compulsory mediation were addressed in *Churchill*, which held that a court-directed ADR process must not impair the essence of access to court and must be proportionate to the dispute.

(d) How active is the mediation community in cooperating with courts?

839. The mediation community is active. CEDR conducts research and periodic audits, including its Ninth and Tenth Mediation Audits, to track statistics and trends. The Civil Mediation Council is a recognized authority on mediation, operates a voluntary regulatory system for mediators, and engages with the judiciary and government.

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

840. Formal requirements. No formal qualification is legally required for a person to describe themselves as a mediator in England and Wales. Mediators commonly complete accredited training. Many are practising solicitors or barristers and are subject to their professional regulators' codes. There is no single public body regulating all mediators. Voluntary regulation is provided through the CMC and its Code of Conduct.

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

841. No. Although many mediators have legal education and experience, this is not a statutory requirement. The emphasis is on facilitation skills and neutrality, although legal expertise is often useful.

(c) What requirements must a mediator meet to participate in court proceedings, and may the parties or the court impose additional requirements?

842. There are no special statutory requirements for mediation connected with litigation. The parties are free to select the mediator. When directing participation in mediation, the court does not ordinarily appoint a named mediator but leaves selection to the parties. The parties may agree to additional requirements, such as expertise in a particular industry.

(d) Are mediators specialized by category of case, and how is such specialization regulated?

843. Specialization is not prescribed by legislation. In practice, mediators commonly specialize in areas such as commercial disputes, construction, or finance, on the basis of professional experience. The parties consider that expertise when selecting a mediator.

(e) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

844. CEDR characterizes the mediator as an independent neutral intermediary. The mediator is not a court assistant in a strict sense, although mediation supports the administration of justice by reducing court caseloads. The mediator represents neither party and has no decision-making power.

(f) Are a mediator's rights and duties laid down in procedural law?

845. The CPR does not set out the mediator's rights and duties in detail. Standards of conduct are primarily contained in voluntary professional codes, such as the CMC Code of Conduct, and in the regulatory codes applicable to lawyers acting as mediators.

(g) For what may a mediator be held liable?

846. A mediator is principally responsible for compliance with professional and ethical standards. Breach, such as disclosure of confidential information or bias, may result in disciplinary consequences imposed by a body whose rules the mediator has accepted, including the CMC, or in civil liability for breach of the mediation-services contract concluded with the parties.

(h) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

847. Yes. A mediator may withdraw, commonly where continuing would compromise neutrality or where a party acts in bad faith. The mediator informs the parties and, where appropriate, the court. If proceedings were stayed, the failed mediation ordinarily results in their resumption.

(i) How is the mediator's remuneration paid, and by whom?

848. The parties agree on how mediation costs will be allocated. They are usually shared equally, although the parties may agree otherwise. The arrangement forms part of the mediation agreement concluded before the procedure begins.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties move to mediation?

849. Mediation is available before a claim is issued, at any stage of court proceedings, and even after a hearing but before judgment.

(b) May mediation be used after a dispute has been brought before a court?

850. Yes. This is common practice. At various case-management stages, including on the fast track and multi-track, judges must consider whether to refer the parties to mediation under CPR 28.7(d) and 29.2(1A).

(c) Must a judge propose mediation or refer the parties to mediation upon a party's application or on the judge's own initiative? If so, at what stage and in what procedural form? May an order directing the parties to mediation be appealed?

851. The court must actively manage cases, including by encouraging or facilitating ADR under CPR 1.4(2)(e). It may do so on its own initiative or on a party's application. The court may stay proceedings to permit mediation or, following *Churchill*, directly order the parties to participate. Such a case-management order may be appealed in the ordinary way, but success will depend on whether it complies with the principles in *Churchill* concerning access to court and proportionality.

(d) Does an agreement to mediate stay court proceedings? If so, does it do so automatically or only upon a party's application? Does it suspend or interrupt the limitation period?

852. The court will commonly stay proceedings, on application or on its own initiative, to allow mediation. A stay is not automatic and requires an order.

853. Commencement of mediation does not automatically suspend limitation. Where proceedings have already been issued and stayed, limitation is ordinarily no longer an immediate concern because the claim has been filed.

(e) Are there any special requirements applicable to mediation connected with court proceedings?

854. There are no special procedural requirements governing the mediation itself. The parties must, however, inform the court whether settlement was reached. The court may also consider their conduct in relation to mediation when determining costs.

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by providing the final settlement?

855. The mediator is not required to report directly to the court. The parties inform the court whether settlement was reached. The substance of negotiations remains confidential, and the mediator does not provide a report on the conduct of the procedure.

(g) Is the mediator prohibited from expressing evaluative views, giving legal advice, or proposing possible solutions?

856. Mediation in England and Wales is principally facilitative, with some evaluative elements. The mediator does not provide legal advice, which is the function of the parties' lawyers, but may explore possible solutions and help the parties assess risk through shuttle diplomacy and structured discussion. The mediator may not impose a view or decide the dispute.

(h) How are the general principles of mediation implemented and safeguarded when mediation takes place during court proceedings?

857. Neutrality and confidentiality are protected by professional ethics and the mediation agreement. The court supports them by preventing mediation communications from being used in the proceedings under the without-prejudice doctrine and by treating mediation as a private process controlled by the parties.

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Are dedicated mediation rooms available in courthouses?

858. Mediation may take place wherever the parties agree, including law-firm offices, conference facilities, or online. Some courts may provide rooms, but this is not mandatory.

(b) Are there approved regulations or rules governing judicial mediation?

859. There is no single public code governing mediation. The process generally follows accepted stages, and the parties and mediator agree the procedure at the outset.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

860. No statutory maximum is prescribed. When staying proceedings, the court usually specifies a reasonable period, for example, four to eight weeks, and may extend it on application where settlement remains realistic. The mediation session itself commonly lasts one or two days.

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act after approval?

861. A mediation settlement is a contract. Before litigation, it is simply a binding agreement between the parties. If proceedings are pending, the parties may embody it in:
- a consent order, under which the court makes an order in the terms agreed and the case is concluded;
 - a Tomlin order, under which the proceedings are stayed on agreed terms set out in a confidential schedule. If a party fails to comply, the other may return to court to enforce the terms without commencing fresh proceedings.

(b) Must the court approve a mediation settlement as a court settlement if it complies with the law, or is approval discretionary?

862. Where the parties ask the court to embody a lawful settlement in a consent order, the court will ordinarily approve it.

(c) On what grounds may the court refuse approval? Does it review the legality of the settlement on the merits?

863. The court may refuse where the terms exceed its jurisdiction or contravene public policy. Otherwise, because the settlement is a private agreement, the court does not examine its substantive merits unless there is an apparent issue such as fraud, mistake, or lack of genuine consent.

(d) How is the settlement enforced, and what consequences may follow from non-performance?

864. A simple contractual settlement is enforced through an ordinary claim for breach of contract.
865. Where the settlement is embodied in a Tomlin order, a party may apply to the same court to enforce the scheduled terms without commencing fresh proceedings.
866. A settlement embodied in a consent order is enforced as a court order.

9. Incentives and Barriers to the Use of Mediation in Court Proceedings

(a) Are the costs of pre-litigation mediation treated as litigation costs and recoverable from the unsuccessful party?

867. Mediation costs may be included in recoverable litigation costs. Under CPR 44.2, the court has broad discretion and considers the parties' conduct. Reasonable pre-litigation mediation costs may therefore be recovered from the unsuccessful party where incurred to settle the dispute.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

868. Under CPR 44.2(5)(e), the court considers an unreasonable refusal to mediate when determining costs. Even a successful party may be deprived of some costs or ordered to pay part of the unsuccessful party's costs. *Halsey* sets out the relevant criteria.

(c) Are tax benefits or court-fee incentives available to parties that use mediation?

869. The principal incentives are the risk of adverse cost consequences and the saving of time and money compared with prolonged litigation.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

870. The principal barriers identified in Ministry of Justice responses to the Call for Evidence on Dispute Resolution include:

- subjective barriers:
 - the perception of mediation as a mere procedural formality before trial rather than a genuine route to settlement;
 - concern that agreeing to mediate will be perceived as weakness or an admission of liability;
 - an entrenched desire to have one's day in court;
- organizational and informational barriers:
 - limited understanding of the mediator's role, impartiality, and lack of coercive power;
 - uncertainty about the relationship between mediation fees and litigation costs.

10. Other Issues

(a) Are other conciliatory procedures established by law, and how do they relate to mediation?

871. Arbitration is the principal adjudicative alternative to litigation. Lawyer-to-lawyer negotiations are also common but are less structured than mediation. The fundamental distinction is that mediation seeks agreement, whereas arbitration and litigation produce a binding determination.

(b) How has the historical context of the jurisdiction affected the contemporary perception and institutionalization of mediation?

872. English civil justice was historically strongly adversarial. From the late twentieth century, pressure to reduce court congestion and parties' costs led to a shift towards ADR. The introduction of the CPR in 1998, with its overriding objective, was central to the institutionalization of mediation. Case law, particularly *Halsey* and *Churchill*, has shaped increasingly favourable attitudes.

(c) What official objectives are stated for the development of mediation?

873. The principal objective reflected in the CPR is to deal with cases justly and at proportionate cost. Mediation supports that objective by resolving disputes more quickly and cheaply, reducing the burden on courts, and saving public and private resources. International standing may also be relevant, including in connection with the United Kingdom's participation in the Singapore Convention on Mediation.

(d) May a judge act as a mediator?

874. Not in the same case. The judicial and mediation roles are strictly separated because combining them would undermine impartiality and confidentiality. Retired judges frequently act as mediators once they no longer exercise judicial office.

(e) May mediation form part of the legal-aid system? If so, how is mediators' work funded?

875. Certain schemes provide free or reduced cost mediation through the court system, including pilot programmes for claims valued at up to GBP 10,000. Such schemes may be publicly funded.

(f) How do online platforms and digitalization affect traditional mediation practice?

876. Digitalization has substantially increased online mediation. CEDR data indicate that before March 2020 only 26% of mediators reported conducting online mediations; in the first six months of the pandemic, the figure increased to 71%. By 2022, 64% of 17,000 mediations were conducted online. Online and hybrid mediation are now widely accepted alongside in-person sessions.

XI. United States of America (the State of Florida)

1. Principal Legislation and Other Instruments

877. Florida has a multi-level regulatory framework for mediation, comprising:

- Constitutional and statutory foundations:
 - Chapter 44 of the Florida Statutes is the principal statute establishing State policy on dispute resolution. Section 44.1011(2) defines mediation. Section 44.107 grants statutory immunity to court-appointed mediators. Sections 44.401–44.406 constitute the Mediation Confidentiality and Privilege Act and regulate confidentiality in detail.⁵⁷
- Procedural rules:
 - The Florida Rules of Civil Procedure contain provisions specific to mediation, including Rule 1.720(e), which requires certification of representatives' settlement authority, and Rule 1.750 on small-claims mediation.
- Rules specific to mediators:
 - The Florida Rules for Certified and Court-Appointed Mediators, adopted through the Florida Dispute Resolution Center of the Office of the State Courts Administrator and the Florida Supreme Court, form the cornerstone of ethical and disciplinary regulation. They comprise:
 - Part I, Rules 10.100–10.140: qualification and certification requirements;
 - Part II, Rules 10.200–10.690: standards of professional conduct;
 - Part III, Rules 10.700–10.910: complaint procedures and disciplinary sanctions.
- Administrative procedures:
 - The Operating Procedures Governing Mediator Certification describes how certification rules apply in practice, including applications, fingerprinting, mentoring requirements, fees, and renewal.
- Guidance and best practice materials:
 - The County Mediator's Manual is a training resource approved by the Florida Supreme Court. It explains mediation procedure, techniques, and ethical requirements for new mediators.
 - The Florida Mediation Best Practices Handbook was prepared by practitioners, including lawyers and mediators. It is not legally binding but provides practical guidance on effective mediation.
 - Mediator Ethics Advisory Committee Opinions provide official guidance on disputed ethical issues. Mediators may rely on them as evidence of good faith under Rule 10.910(f).

⁵⁷ Privilege means a special right or immunity that allows certain communications to remain confidential and protected from disclosure in court.

2. General Concept of Mediation

(a) Understanding of mediation in the jurisdiction

878. In Florida, mediation is not merely an alternative procedure but a deeply integrated, highly institutionalized, and professionally regulated component of the State justice system. Its meaning is shaped by its statutory definition, fundamental principles, and practical role in dispute resolution.
879. In broad terms, mediation is a process in which a neutral third person helps the parties reach a voluntary settlement. Its legal and practical meaning is elaborated through a multi-level body of rules.
880. Section 44.1011(2) of the Florida Statutes defines mediation as a process in which a neutral third person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and non-adversarial process intended to help the parties reach a mutually acceptable and voluntary agreement. Decision-making authority remains with the parties. The mediator's role includes helping identify issues, encouraging joint problem-solving, and exploring alternative settlement options.
881. Rule 10.210 provides a corresponding ethical definition: mediation is a process in which a neutral and impartial third person encourages and facilitates resolution without prescribing the outcome. It is an informal and non-adversarial process designed to help disputing parties reach a mutually acceptable agreement.
882. The Florida approach is based on principles set out in Rules 10.300–10.380 and elaborated in training materials:
- Party self-determination. Under Rule 10.310, decisions in mediation are made by the parties. The mediator may not coerce or improperly influence them. If a party cannot exercise self-determination freely, for example, because of fear or psychological pressure, the mediator must adjourn or terminate mediation. The parties determine whether to participate and whether to settle.
 - Impartiality and neutrality. Rule 10.330 requires freedom from favouritism and bias in words and conduct. The requirement concerns both actual impartiality and its appearance. Rule 10.340 regulates conflicts of interest in detail: the mediator must disclose any relationship that may affect impartiality and must withdraw from an evident conflict even if the parties do not object.
 - Confidentiality. Florida has one of the strongest confidentiality regimes in the United States, established in Chapter 44 and Rule 10.360. Information disclosed in mediation is privileged and may not be used in later proceedings. Information received in caucus may not be disclosed to another party without the express consent of the party who provided it. Exceptions are narrow and include signed settlements, mandatory reports of child abuse, and disciplinary investigations.
 - Informality and non-adversarial character. Mediation does not involve claimants and defendants in the conventional adversarial sense. The objective is not to establish which party is right but to find a mutually acceptable solution. The mediator reduces tension, promotes constructive communication, and directs attention towards future arrangements rather than past grievances.
883. Understanding mediation in Florida also requires knowledge of the context in which it operates. It applies to most civil disputes and is based on mediator specialization.

Depending on the court and case type, a mediator must hold the appropriate Florida Supreme Court certification:

- County mediator: county court matters, including small claims and disputes up to the applicable monetary limit;
- Circuit mediator: higher-value civil claims in circuit courts;
- Family mediator: divorce, parenting, and related family disputes;
- Dependency mediator: child-protection proceedings;
- Appellate mediator: cases on appeal.

This framework is intended to ensure that mediators possess the knowledge and skills required for the relevant category of dispute.

884. Court-annexed mediation. Mediation is a standard feature of litigation in Florida rather than merely a pre-litigation option. The Best Practices Handbook states that more than 90% of civil cases conclude before trial and that many settle through mediation. Judges routinely refer cases to mediation. Mediators report only whether settlement was reached, without disclosing the negotiations, under Rule 10.360(e). Mediation thereby operates in the shadow of the court and permits solutions unavailable through adjudication, such as apologies, continued cooperation, and tailored payment arrangements.

(b) Are voluntariness, confidentiality, and neutrality established by law?

885. Yes. These principles are fundamental and are established in statutes and ethical rules:
- Self-determination and voluntariness. Rule 10.310 provides that decisions are made exclusively by the parties and the mediator may not coerce them. If a party cannot exercise self-determination freely, the mediator must adjourn or terminate mediation.
 - Impartiality and neutrality. Rule 10.330 requires mediators to remain free from favoritism and bias. Where impartiality cannot be maintained, the mediator must withdraw. Rule 10.340 regulates conflicts of interest.
 - Confidentiality. Chapter 44 and Rule 10.360 require confidentiality of information obtained in mediation. Information received in caucus may not be disclosed to another party without consent.

(c) What are the limits of confidentiality? May mediation negotiations be relied on in court?

886. Florida's confidentiality regime is strict. Participants have a privilege to refuse to testify about mediation communications, and the mediator may not comment to the court on the parties' good faith under Rule 10.360(e). Exceptions include:
- a settlement signed during mediation, which may be submitted for approval and enforcement;
 - mandatory reporting of a planned offence or abuse of a child or vulnerable adult under Rule 10.420(b)(6)–(7);
 - disclosure necessary for investigation of complaints against a mediator under Rule 10.870.

(d) Is legality established as a condition for a mediation settlement?

887. Yes, indirectly but necessarily. The mediator does not assess whether an agreement is substantively wise under Rule 10.220 but must ensure that the parties understand its consequences. If a party may not understand how the agreement affects their rights, the mediator must recommend independent legal advice under Rule 10.370(b). A settlement filed in court is reviewed for clarity and enforceability.

3. Scope of Mediation and Its Relationship with Court Proceedings

(a) What disputes does mediation cover: civil, commercial, employment, administrative, and other disputes?

888. The relevant rules and guidance cover a broad range of cases, with distinct mediator certifications:
- County courts: civil disputes within the monetary jurisdiction of the county courts, including small claims, landlord–tenant, contractual, and consumer disputes;
 - Circuit courts: higher-value civil cases other than family matters;
 - Family cases: divorce, parenting, and related disputes;
 - Dependency cases: child-protection proceedings;
 - Appellate cases: disputes at the appellate stage;
 - the Best Practices Handbook also discusses mediation of electronic-discovery disputes.

(b) Are any matters excluded, for example, disputes involving public interests?

889. No general exclusion was identified. A mediator may decline a case outside their competence under Rule 10.640, and mediation may be terminated where it is inappropriate for the dispute under Rule 10.420(b)(3).

4. The Role of Case Law and the Attitude of the Judiciary

(a) What are the general statistics on the use of mediation in court cases?

890. No comprehensive or fully reliable public statistics were identified. The Best Practices Handbook nevertheless states that more than 90% of cases conclude before trial and that many do so through mediation.

(b) Are there any guidelines issued by higher courts, precedents, or other judicial guidance on mediation?

891. Yes. The Florida Supreme Court adopts the governing rules and oversees training and certification. The Florida Rules for Certified and Court-Appointed Mediators have regulatory force. Mediator Ethics Advisory Committee opinions provide authoritative guidance on ethical rules under Rule 10.910.

(c) What is the judiciary's attitude towards mediation? What concerns or difficulties do judges identify?

892. Florida judges generally support mediation and routinely refer cases to it. Judges were among the principal contributors to the Best Practices Handbook.

(d) How active is the mediation community in cooperating with courts?

893. The preparation of the Best Practices Handbook by more than 400 participants and mediator–litigator forums organized under the auspices of The Florida Bar demonstrate close cooperation between the mediation community and the courts. Formal disciplinary bodies, including the Mediator Qualifications and Discipline Review Board, include judges, lawyers, and mediators.

5. The Legal Status, Role, and Duties of a Mediator in Court Proceedings

(a) General requirements applicable to mediators

894. Eligibility for certification depends on several requirements:
- Age: at least 21 years under Rule 10.100(a).
 - Education: requirements vary by certification. A county mediator requires a high-school diploma or General Educational Development (GED) credential. Family, circuit, and dependency mediators require at least a bachelor’s degree.
 - Training: successful completion of Florida Supreme Court-certified training for the relevant category.
 - Mentoring: required for most categories. County-mediator certification requires 60 hours of mentoring.
 - Good moral character: verified through, among other things, fingerprinting under Rule 10.110 and the Operating Procedures.
 - Membership of a professional or self-regulatory organization is not required, but certification must be maintained through fees and continuing education.
 - Fees: application and certification fees are payable in amounts prescribed by the Operating Procedures.

(b) Must a mediator hold a university degree in law, generally or specifically when participating in court proceedings?

895. No. County-mediator certification requires only secondary education. Other categories require a bachelor’s degree, but not necessarily in law. Mediators are expressly prohibited from giving legal advice under Rule 10.370(b), although they may provide information within their competence under Rule 10.370(a).

(c) What requirements must a mediator meet to participate in court proceedings, and may the parties or the court impose additional requirements?

896. Requirements depend directly on the level of court and type of dispute. Rule 10.100, Rule 10.105, and the Operating Procedures establish a point-based certification system:
- County court mediation:
 - minimum high-school diploma or GED;
 - 30-hour Supreme Court-certified county-mediation course;
 - mentoring requirements through observation and supervised mediation;
 - a total of 100 certification points.

- Family mediation:
 - at least a bachelor's degree;
 - 30-hour family-mediation training;
 - mentoring requirements;
 - additional points for experience, language skills, or other qualifications;
 - a total of 100 certification points.
- Circuit-court mediation:
 - requirements broadly comparable to family mediation, including a bachelor's degree, specialist training, mentoring, and 100 points.
- Dependency mediation:
 - requirements broadly comparable to family and circuit mediation.
- Appellate mediation:
 - the mediator must already be certified in family, circuit, or dependency mediation and complete additional appellate-mediation training.

897. The State does not certify mediators by economic sector, such as construction or information technology. Certification is tied to court jurisdiction and case type.
898. The parties and, within procedural limits, the court may impose additional practical requirements. Party autonomy and professional ethics are central.
899. The parties may select a mediator whom they regard as best suited to the dispute. In a complex construction case, for example, they may choose a circuit mediator with construction experience. Rule 10.640 requires the mediator to decline a matter outside their skills and experience.
900. Procedural rules may impose additional requirements not on the mediator but on party representatives. Rule 1.720(e) requires attendance by a person with full authority to settle. For an insurer, the representative must have authority up to the claimant's last demand or the policy limit. Although not a mediator qualification, this requirement is critical to effective mediation.
901. Mediator self-assessment. Under Rule 10.640, a mediator must decline, withdraw from, or seek appropriate assistance in a case whose facts and circumstances exceed the mediator's skills or experience.
902. When referring a case, the judge may use a list of certified mediators. The parties usually retain a right of selection. In certain small-claims programmes, appointments may be automatic or rotational, although the parties may agree on a particular mediator.

[d] Are mediators specialized by category of case, and how is such specialization regulated?

903. Yes. Rule 10.100 establishes separate certification categories and Rule 10.105 a point system for county, family, circuit, dependency, and appellate mediators. A mediator may hold several certifications and must decline a matter outside their competence under Rule 10.640.

(e) What is the procedural role of a mediator: an assistant to the court, an independent neutral intermediary, or a representative of the procedure?

904. A Florida court mediator is an independent neutral intermediary who assists communication, identifies interests, and facilitates settlement. The mediator is neither a judicial assistant in the narrow sense nor a party representative. The principal duty is to provide a process in which the parties can exercise self-determination.

(f) Are mediator's rights and duties laid down in procedural law?

905. Part II of the mediator rules, Rules 10.200–10.690, describes duties owed to the parties, the process, the court, and the profession in detail. Rights arise from those duties and other procedural provisions, including statutory immunity.

(g) For what may a mediator be held liable?

906. A mediator may incur disciplinary liability for breach of the Code of Conduct, including bias, breach of confidentiality, or coercion. Sanctions range from warning to loss of certification.
907. Court-appointed mediators have statutory quasi-judicial immunity under section 44.107 of the Florida Statutes for conduct within the mediation function.

(h) May a mediator voluntarily or compulsorily terminate an accepted mandate to conduct mediation? What consequences may this have for the parties, the court, and the mediator?

908. A mediator may withdraw where impartiality cannot be maintained, where the matter exceeds the mediator's competence, or where a conflict of interest arises under Rules 10.330, 10.340, and 10.640.
909. Compulsory termination may follow disciplinary proceedings or occur automatically upon conviction of a felony under Rule 10.850(c).

(i) How is the mediator's remuneration paid, and by whom?

910. Remuneration is established by agreement. Costs are usually divided equally unless the court or the parties provide otherwise. The mediator must disclose the hourly rate, cancellation policy, and other financial terms in advance. Small-claims mediation is often free and court-funded.

6. Mediation in Relation to Court Proceedings

(a) At what stage of court proceedings may the parties move to mediation?

911. Mediation may be used at any stage, although it is most common during pre-trial preparation. The Best Practices Handbook recommends reserving adequate time and discussing scheduling with the mediator.

(b) May mediation be used after a dispute has been brought before a court?

912. Yes. As noted above, mediation is available at any stage of litigation.

(c) Must a judge propose mediation or refer the parties to mediation upon a party's application or on the judge's own initiative? If so, at what stage and in what procedural form? May an order directing the parties to mediation be appealed?

913. Judges refer cases to mediation under the civil-procedure rules. In some circuits, referral is automatic for specified categories of cases.

(d) Does an agreement to mediate stay court proceedings? If so, does it do so automatically or only upon a party's application? Does it suspend or interrupt the limitation period?

914. The reviewed sources do not provide a direct general rule. In practice, when referring a case to mediation, the court ordinarily stays or adjourns proceedings. The materials do not specifically address limitation, although commencement of the action will generally have protected the claim.

(e) Are there any special requirements applicable to mediation connected with court proceedings?

915. Party and insurer representatives must hold written authority to settle under Rule 1.720(e) of the Florida Rules of Civil Procedure. Lawyers must be able to settle without additional consultation. No further mediator requirements apply beyond those described above.

(f) Must the mediator inform the court that mediation has taken place or report its outcome, other than by providing the final settlement?

916. The mediator reports only the outcome. A brief Mediation Results Report states whether there was a full settlement, partial settlement, or no settlement. The mediator may not comment on conduct or negotiations.

(g) Is the mediator prohibited from expressing evaluative views, giving legal advice, or proposing possible solutions?

917. The mediator may not judge the merits of the parties' positions under Rule 10.220 or give legal advice under Rule 10.370(b).

918. The mediator may suggest options for discussion, provided impartiality and self-determination are preserved. A mediator's proposal may offer, but not impose, a possible resolution.

(h) How are the general principles of mediation implemented and safeguarded when mediation takes place during court proceedings?

919. The principles are safeguarded through detailed ethical rules, court supervision limited to procedural matters and outcome reporting, recusal and conflict-disclosure mechanisms, and disciplinary liability.

7. Procedural Aspects of Interaction between Courts and Mediation

(a) Are dedicated mediation rooms available in courthouses?

920. Yes. Guidance refers to dedicated mediation rooms in courthouses. The Best Practices Handbook also recommends suitable facilities, including internet access and refreshments.

(b) Are there approved regulations or rules governing judicial mediation?

921. Yes. Court-annexed mediation is governed by procedural rules, ethical mediator rules, and best-practice materials. The County Mediator's Manual describes the process in detail, including opening statements, information gathering, and caucuses.

(c) What is the maximum duration of mediation conducted in connection with court proceedings? May the court extend it?

922. No maximum duration is prescribed. The mediator must allow sufficient time for the parties to exercise self-determination under Rule 10.430. County matters may take 45–60 minutes, while circuit matters commonly take half a day or a full day.

8. Mediation Settlements and Their Enforcement

(a) What is the legal status of a mediation settlement? Is it a contract, or does it become a judicial act after approval?

923. A mediation settlement is a legally binding contract. If reached in pending litigation and submitted to the court, it may be approved and entered as a court order.

(b) Must the court approve a mediation settlement as a court settlement if it complies with the law, or is approval discretionary?

924. The court will approve a settlement that is clear, unambiguous, and lawful. Its review is directed principally to form and enforceability rather than the substantive bargain, absent an evident violation.

(c) On what grounds may the court refuse approval? Does it review the legality of the settlement on the merits?

925. The court may refuse approval where the terms are unclear or ambiguous and therefore incapable of enforcement, or where the subject matter exceeds the court's jurisdiction.

(d) How is the settlement enforced, and what consequences may follow from non-performance?

926. A court-approved settlement is enforced as a court order. In the event of non-performance, a party may apply to the same court for enforcement. Settlements commonly provide that the court retains jurisdiction for that purpose.

9. Incentives and Barriers to the Use of Mediation in Court Proceedings

(a) Are the costs of pre-litigation mediation treated as litigation costs and recoverable from the unsuccessful party?

927. The parties ordinarily share the mediator's fees equally, although they may agree otherwise. A successful party may seek to recover mediation expenses as part of litigation costs where permitted.

(b) Are financial sanctions imposed for an unreasonable refusal to mediate?

928. No specific financial sanction was identified for refusal to mediate, although the court may consider unwillingness to participate when allocating costs or imposing case-management sanctions. A mediator reports non-attendance without disclosing negotiations.

(c) Are tax benefits or court-fee incentives available to parties that use mediation?

929. No such benefits were identified in the reviewed materials.

(d) What principal organizational, economic, and subjective barriers are identified by practitioners?

930. The reviewed sources identify:

- organizational barriers, including scheduling difficulties and maintaining confidentiality in virtual mediation;
- subjective barriers, including high emotional intensity, distrust, and unwillingness to compromise. Mediators are encouraged to act as a voice of reality and help the parties assess best- and worst-case outcomes.

10. Other Issues

(a) Are other conciliatory procedures established by law, and how do they relate to mediation?

931. Florida also uses other settlement and dispute-resolution procedures. Their legal status, formality, and relationship with mediation differ. They include court-approved settlement conferences, lawyer-to-lawyer negotiation, arbitration, and court-annexed non-binding arbitration.
932. Court-approved settlement conferences involve a judge, often one who will not try the merits, assisting the parties in reaching agreement. Unlike a mediator, the judge possesses judicial authority, and the judge's assessment of strengths and weaknesses may carry significant weight. Although the judge does not decide the case at that stage, the assessment may signal a possible judicial outcome. By contrast, the mediator stresses the absence of decision-making authority. Court-approved settlement conferences are generally used as a case-management tool and may occur during pre-trial conferences. Negotiations before a judge are generally confidential, but judicial participation changes their dynamics.
933. Lawyer-to-lawyer negotiations are the most common and least formalized settlement process. Lawyers exchange offers, calls, and correspondence without a neutral intermediary. Such negotiation is a continuous feature of litigation and may occur before, during, or after mediation. Mediation provides a more structured process where bilateral negotiations have reached an impasse. The Best Practices Handbook encourages mediation advocacy, requiring skills distinct from purely adversarial advocacy.
934. Arbitration is adjudicative: a neutral arbitrator hears the parties and issues a binding award. Mediation is consensual and leaves the outcome with the parties; arbitration leaves it with the arbitrator. Commercial contracts often combine the two. Hybrid med-arb procedures exist, but Florida's mediator rules prohibit the same mediator from later acting as arbitrator in the same matter.
935. Court-annexed or non-binding arbitration is compulsory in some Florida courts for particular categories of cases. The arbitrator issues a non-final decision, and either party may request a trial de novo. The procedure encourages realistic case assessment but is not conciliatory in the strict sense because it seeks a decision rather than consensus.

(b) How has the historical context of the jurisdiction affected the contemporary perception and institutionalization of mediation?

936. The Harvard negotiation school and *Getting to Yes* (1981) had a major influence. Its principles, including separating people from the problem and focusing on interests rather than positions, underpin Florida mediation practice.

(c) What official objectives are stated for the development of mediation?

937. The stated objective is to enable peaceful and efficient dispute resolution while preserving party control. Reducing court caseloads is an important consequence but not the sole purpose. Mediation also seeks party empowerment.

(d) May a judge act as a mediator?

938. A judge may act as a mediator subject to restrictions. A serving judge may not mediate in the judge's own court. Senior or retired judges may obtain certification but may not mediate in circuits in which they preside and may not use judicial status improperly in marketing.

(e) May mediation form part of the legal-aid system? If so, how is mediators' work funded?

939. For certain categories, including small claims, mediation may form part of publicly supported access to justice. Rule 10.690(a) also encourages mediators to provide pro bono or reduced-fee services.

(f) How do online platforms and digitalization affect traditional mediation practice?

940. The Best Practices Handbook contains extensive guidance on virtual mediation, including platform management, security, and electronic-signature tools such as DocuSign and Adobe. The Operating Procedures also permit mentoring to be conducted remotely.

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