

ano 05 - n. 09 | janeiro/junho - 2023  
Belo Horizonte | p. 1-236 | ISSN 2596-3201  
R. Bras. Al. Dis. Res. – RBADR

Revista Brasileira de  
*ALTERNATIVE DISPUTE RESOLUTION*

**RBADR**

**FORUM**  
CONHECIMENTO JURÍDICO

## **REVISTA BRASILEIRA DE ALTERNATIVE DISPUTE RESOLUTION – RBADR**

© 2023 Editora Fórum Ltda.

Todos os direitos reservados. É proibida a reprodução total ou parcial, de qualquer forma ou por qualquer meio eletrônico ou mecânico, inclusive através de processos xerográficos, de fotocópias ou de gravação, sem permissão por escrito do possuidor dos direitos de cópias (Lei nº 9.610, de 19.02.1998).

Os conceitos e opiniões expressas nos trabalhos assinados são de responsabilidade exclusiva de seus autores.



**Luís Cláudio Rodrigues Ferreira**  
Presidente e Editor

Rua Paulo Ribeiro Bastos, 211 – Jardim Atlântico – CEP 31710-430 – Belo Horizonte/MG – Brasil – Tel.: (31) 99412.0131  
[www.editoraforum.com.br](http://www.editoraforum.com.br) / E-mail: [editoraforum@editoraforum.com.br](mailto:editoraforum@editoraforum.com.br)

Coordenação editorial: Leonardo Eustáquio Siqueira Araújo  
Aline Sobreira de Oliveira

Projeto gráfico: Walter Santos  
Capa: Allyson Alves

Impressa no Brasil / Printed in Brazil / Distribuída em todo o Território Nacional

Técnica. Empenho. Zelo. Esses foram alguns dos cuidados aplicados na edição desta obra. No entanto, podem ocorrer erros de impressão, digitação ou mesmo restar alguma dúvida conceitual. Caso se constate algo assim, solicitamos a gentileza de nos comunicar através do e-mail [editorial@editoraforum.com.br](mailto:editorial@editoraforum.com.br) para que possamos esclarecer, no que couber. A sua contribuição é muito importante para mantermos a excelência editorial. A Editora Fórum agradece a sua contribuição.

Este periódico está indexado no Scopus, da Elsevier.

R454 Revista Brasileira de Alternative Dispute Resolution - RBADR. – ano 1, n. 1  
(jan./jun. 2019) – Belo Horizonte: Fórum, 2019-.

Semestral; 17cm x 24cm

ISSN impresso 2596-3201  
ISSN digital 2674-8835

1. Direito. 2. Direito Processual Civil. 3. Direito Civil. I. Fórum.

CDD: 341.46

CDU: 347.9

# Expediente

## CONSELHO EDITORIAL

### PRESIDENTE

*Gustavo da Rocha Schmidt* (Presidente do CBMA, Escola de Direito da Fundação Getúlio Vargas, Rio de Janeiro, RJ, Brasil)

### EDITOR-CHEFE

*Daniel Brantes Ferreira* (Vice-Presidente de Assuntos Acadêmicos do CBMA, Rio de Janeiro, RJ, Brasil)

### EDITORES-ASSISTENTES

*Bianca Oliveira de Farias* (Diretora de Assuntos Acadêmicos do CBMA, Escola da Magistratura do Estado do Rio de Janeiro - EMERJ, Rio de Janeiro, RJ, Brasil)  
*Elizaveta A. Gromova* (South Ural State University, Institute of Law, Chelyabinsk, Russia Federation)

### CONSELHO EDITORIAL INTERNO - INTERNAL EDITORIAL BOARD

Presidente: *Rafael Carvalho Rezende Oliveira* (Procurador do Município do Rio de Janeiro, Centro Universitário IBMEC-RJ, Rio de Janeiro, RJ, Brasil)  
*Bruno Freire e Silva* (Universidade do Estado do Rio de Janeiro - UERJ, Rio de Janeiro, RJ, Brasil)  
*Fernando Gama de Miranda Netto* (Universidade Federal Fluminense - UFF, Niterói, RJ, Brasil)  
*José Roberto de Castro Neves* (Pontifícia Universidade Católica do Rio de Janeiro - PUC-Rio, Rio de Janeiro, RJ, Brasil)  
*Lidia Spitz* (Universidade Federal do Rio de Janeiro, Rio de Janeiro, RJ, Brasil)  
*Luiz Fux* (Ministro do Supremo Tribunal Federal - STF - Universidade do Estado do Rio de Janeiro - UERJ - Rio de Janeiro, RJ, Brasil)  
*Marilda Rosado de Sá Ribeiro* (Universidade do Estado do Rio de Janeiro - UERJ, Rio de Janeiro, RJ, Brasil)  
*Nadia de Araujo* (Pontifícia Universidade Católica do Rio de Janeiro - PUC-Rio, Rio de Janeiro, RJ, Brasil)  
*Sergio Gustavo de Mattos Pauseiro* (Universidade Federal Fluminense - UFF, Niterói, RJ, Brasil)  
*Vinicius Figueiredo Chaves* (Universidade Federal Fluminense - UFF; Universidade Federal do Rio de Janeiro - UFRJ, Rio de Janeiro, RJ, Brasil)

### CONSELHO EDITORIAL NACIONAL EXTERNO - NATIONAL EXTERNAL EDITORIAL BOARD

*André Guilherme Lemos Jorge* (Diretor do Programa de Mestrado em Direito da Uninove, São Paulo, SP - Brasil)  
*Alceu Mauricio Júnior* (Juiz Federal do Tribunal Regional Federal da 2ª Região - Universidade de Vila Velha - UVV, Vila Velha, ES, Brasil)  
*Alexandre de Souza Agra Belmonte* (Ministro do Tribunal Superior do Trabalho - TST - Instituto de Educação Superior de Brasília - IESB Centro Universitário - Brasília, DF, Brasil)  
*Azor Lopes da Silva Jr* (Centro Universitário de Rio Preto - UNIRP, São José do Rio Preto, SP, Brasil)  
*Cármen Lúcia Antunes Rocha* (Ministra do Supremo Tribunal Federal - STF, Brasília, DF, Brasil)  
*Camila Barreto Pinto Silva* (Universidade Metropolitana de Santos - UNIMES, Santos, SP, Brasil)  
*Carolina Sena Vieira* (Faculdade CESUSC, Florianópolis, SC, Brasil)  
*Eduardo José da Fonseca Costa* (Juiz Federal do Tribunal Regional Federal da 3ª Região - Presidente da Associação Brasileira de Direito Processual - ABDPRO, Ribeirão Preto, SP, Brasil)  
*Edson Fachin* (Ministro do Supremo Tribunal Federal - STF - Universidade Federal do Paraná - UFPR, Curitiba, PR, Brasil)  
*Egon Bockmann Moreira* (Universidade Federal do Paraná - UFPR, Curitiba, PR, Brasil)  
*Elias Jacob de Menezes Neto* (Universidade Federal do Rio Grande do Norte - UFRN, Natal, RN, Brasil)  
*Eneida Orbage de Britto Taquary* (Faculdade Presbiteriana Mackenzie, Brasília, DF, Brasil)  
*Fabrício Germano Alves* (Universidade Federal do Rio Grande do Norte - UFRN, Natal, RN, Brasil)  
*Gustavo Henrique Justino de Oliveira* (Universidade de São Paulo - USP, São Paulo, SP, Brasil)  
*Igor Danilevicz* (Universidade Federal do Rio Grande do Sul - UFRGS, Porto Alegre, RS, Brasil)  
*Leila Cuéllar* (Procuradora do Estado - Procuradoria-Geral do Estado do Paraná, Curitiba, PR, Brasil)  
*Leonardo Nemer Caldeira Brant* (Universidade Federal de Minas Gerais - UFMG; Pontifícia Universidade Católica de Minas Gerais - PUC Minas; Presidente do CEDIN, Belo Horizonte, MG, Brasil)  
*Lúcio Delfino* (Universidade de Uberaba - UNIUBE, Uberaba, MG, Brasil)  
*Luis Felipe Salomão* (Ministro do Superior Tribunal de Justiça - STJ, Brasília, DF, Brasil)  
*Luiz Claudio Allemand* (Centro Superior de Ciências Sociais de Vila Velha - ES; Instituto Brasileiro de Estudos Tributários - ES; Fundação Getúlio Vargas - FGV - ES; Faculdade Integradas de Vitória - FDV, Vitória, ES, Brasil)  
*Luiz Gustavo Escórcio Bezerra* (Instituto Brasileiro de Estudos do Direito da Energia - IBDE, São Paulo, SP, Brasil)  
*Marco Félix Jobim* (Pontifícia Universidade Católica do Rio Grande do Sul - PUC-RS, Porto Alegre, RS, Brasil)

*Mateus Pereira* (Universidade Católica de Pernambuco - UNICAP, Recife, PE, Brasil)  
*Nancy Andrighti* (Ministra do Superior Tribunal de Justiça - STJ - Brasília, DF, Brasil)  
*Olavo A. V. Alves Ferreira* (Universidade de Ribeirão Preto - UNAERP, Ribeirão Preto, SP, Brasil)  
*Rafael Peteffi da Silva* (Universidade Federal de Santa Catarina - UFSC, Florianópolis, SC, Brasil)  
*Rodrigo Reis Mazzei* (Universidade Federal do Espírito Santo - UFES, Vitória, ES, Brasil)  
*Selma Maria Ferreira Lemes* (Professora de Arbitragem. Integrou a Comissão relatora da Lei de Arbitragem.  
São Paulo, SP, Brasil)

**CONSELHO EDITORIAL INTERNACIONAL - INTERNATIONAL EDITORIAL BOARD**

President: *Jair Gevaerd* (Pontifícia Universidade Católica do Paraná - PUC-PR, Curitiba, PR, Brasil/ (Pepperdine School of Law - Straus Institute for Dispute Resolution, Los Angeles, California, USA)  
*Ajay Thomas* (Faculty of Law, Manav Rachna University, Haryana, India)  
*Alberto Elisavetsky* (President of ODR Latinoamerica and Director of the Observatory of Social Conflict,  
Universidad Nacional de Tres de Febrero - UNTREF, Buenos Aires, Argentina)  
*Aleksey V. Minbaev* (Kufatin Moscow State Law University, Information Law and Digital Technology Department,  
Moscow, Russia Federation)  
*Carolina Barboza Lima Barrocas* (ADR Institute of British Columbia, Vancouver, British Columbia, Canada)  
*Christopher R. Drahoszal* (University of Kansas School of Law, Lawrence, Kansas, USA)  
*David Macquoid-Mason* (University of KwaZulu-Natal, Centre for Social-Legal Studies, Durban, South Africa)  
*Elena Gladun* (Tyumen State University, Public Administration Department, Tyumen, Russia Federation)  
*Elizaveta A. Gromova* (South Ural State University, Institute of Law, Chelyabinsk, Russia Federation)  
*Francisco Gomez-Abelleira* (Universidad Carlos III de Madrid, Madrid, Spain)  
*Giampiero D'Alessandro* (Camera Arbitrale - Consiglio dell'Ordine degli Avvocati di Napoli, Naples, Italy)  
*Gloria Lim* (Director of the Legal Industry Division, Ministry of Law, Singapore)  
*Gracious Timothy Dunnra* (Independent Advocate and Adjunct Lecturer, New Delhi, India)  
*John Henry Schlegel* (State University of New York Law School at Buffalo, Buffalo, New York, USA)  
*Kenneth A. Dubin* (IE Business School, Madrid, Spain)  
*Marcelo Rosadilla* (Pepperdine School of Law - Straus Institute for Dispute Resolution, Los Angeles, California, USA)  
*Marcio Vasconcellos* (Pepperdine School of Law - Straus Institute for Dispute Resolution e  
USC Gould School of Law, Los Angeles, California, USA)  
*Maria A. Egorova* (Head of the International Cooperation Department of the  
Kutafin Moscow State Law University, Moscow, Russia)  
*Mario Spangenberg Bolívar* (Facultad de Derecho - Universidad Católica del Uruguay, Montevideo, Uruguay)  
*Maureen Arellano Weston* (Pepperdine School of Law - Straus Institute for Dispute Resolution,  
Los Angeles, California, USA)  
*Martha E. Simmons* (Osgoode Hall Law School, Toronto, Ontario, Canada)  
*Mohamed Faizal Mohamed Abdul Kadir* (Society of Mediation Professionals, Singapore)  
*Nathan O'Malley* (USC Gould School of Law, Los Angeles, California, USA)  
*Nazareth Serpa* (Florida International University Law School, Miami, Florida, USA)  
*Niteesh Kumar Upadhyay* (Galgotias University, Greater Noida, India)  
*Olivier P. André* (Senior Vice President da International CPR: International Institute for Conflict Prevention &  
Resolution, New York, New York, USA)  
*Paula Costa e Silva* (Faculdade de Direito da Universidade de Lisboa, Lisbon, Portugal)  
*Paul Eric Mason* (Silicon Valley Arbitration & Mediation Center, Palo Alto, California, USA)  
*Peter Sester* (University of St. Gallen Law School, St. Gallen, Switzerland)  
*Prabhpreet Singh* (Manipal University Jaipur School of Law, Jaipur, India)  
*Rohit Moonka* (University of Delhi - Faculty of Law, Delhi, India)  
*Sai Ramani Garimella* (South Asian University - Faculty of Legal Studies, New Delhi, India)  
*Sharon Press* (Mitchell Hamline School of Law, Saint Paul, Minnesota, EUA)  
*Spyros Antonelos* (RESOLVE Mediators & ADR Experts Associate, Athens, Greece e  
MEF Üniversitesi, Estanbul, Turkey)  
*Sukhsimranjit Singh* (Pepperdine School of Law - Straus Institute for Dispute Resolution,  
Los Angeles, California, USA)  
*Tat Lim* (Aequitas Law LLP - Singapore & Maxwell Mediators, Singapore)  
*Thomas P. Valenti* (Thomas P. Valenti Dispute Resolution Office, Chicago, Illinois, USA)  
*Tiago Serrão* (Faculdade de Direito da Universidade de Lisboa, Lisbon, Portugal)  
*Tianbao Qin* (Wuhan University School of Law, Wuhan, China)  
*Toni Jaeger-Fine* (Fordham Law School, New York, New York, USA)  
*Tuba Bilecik* (RESOLVE Mediators & ADR Experts Associate, Istanbul, Turkey)

## INGLÊS

### EDITORIAL BOARD PRESIDENT

*Gustavo da Rocha Schmidt (CBMA's President, Rio de Janeiro, RJ, Brasil)*

### EDITOR-IN-CHIEF

*Daniel Brantes Ferreira (CBMA's Vice President for Academic Affairs, Rio de Janeiro, RJ, Brasil)*

### ASSISTANT EDITORS

*Bianca Oliveira de Farias (CBMA's Director for Academic Affairs, Escola da Magistratura do Estado do Rio de Janeiro - EMERJ, Rio de Janeiro, RJ, Brasil)*

*Elizaveta A. Gromova (South Ural State University, Institute of Law, Chelyabinsk, Russia Federation)*

### INTERNAL EDITORIAL BOARD

President: *Rafael Carvalho Rezende Oliveira (Procurador do Município do Rio de Janeiro, Centro Universitário IBMEC-RJ, Rio de Janeiro, RJ, Brasil)*

*Bruno Freire e Silva (Universidade do Estado do Rio de Janeiro - UERJ, Rio de Janeiro, RJ, Brasil)*

*Fernando Gama de Miranda Netto (Universidade Federal Fluminense - UFF, Niterói, RJ, Brasil)*

*José Roberto de Castro Neves (Pontifícia Universidade Católica do Rio de Janeiro - PUC-Rio, Rio de Janeiro, RJ, Brasil)*

*Luiz Fux (Ministro do Supremo Tribunal Federal - STF - Universidade do Estado do Rio de Janeiro - UERJ - Rio de Janeiro, RJ, Brasil)*

*Marilda Rosado de Sá Ribeiro (Universidade do Estado do Rio de Janeiro - UERJ, Rio de Janeiro, RJ, Brasil)*

*Nadia de Araújo (Pontifícia Universidade Católica do Rio de Janeiro - PUC-Rio, Rio de Janeiro, RJ, Brasil)*

*Sergio Gustavo de Mattos Pauseiro (Universidade Federal Fluminense - UFF, Niterói, RJ, Brasil)*

*Vinicius Figueiredo Chaves (Universidade Federal Fluminense - UFF; Universidade Federal do Rio de Janeiro - UFRJ, Rio de Janeiro, RJ, Brasil)*

### NATIONAL EXTERNAL EDITORIAL BOARD

*André Guilherme Lemos Jorge (Diretor do Programa de Mestrado em Direito da Uninove, São Paulo, SP - Brasil)*

*Alceu Mauricio Júnior (Juiz Federal do Tribunal Regional Federal da 2ª Região - Universidade de Vila Velha - UVV, Vila Velha, ES, Brasil)*

*Alexandre de Souza Agra Belmonte (Ministro do Tribunal Superior do Trabalho - TST - Instituto de Educação Superior de Brasília - IESB Centro Universitário - Brasília, DF, Brasil)*

*Azor Lopes da Silva Jr (Centro Universitário de Rio Preto - UNIRP, São José do Rio Preto, SP, Brasil)*

*Cármem Lúcia Antunes Rocha (Ministra do Supremo Tribunal Federal - STF, Brasília, DF, Brasil)*

*Camila Barreto Pinto Silva (Universidade Metropolitana de Santos - UNIMES, Santos, SP, Brasil)*

*Carolina Sena Vieira (Faculdade CESUSC, Florianópolis, SC, Brasil)*

*Eduardo José da Fonseca Costa (Juiz Federal do Tribunal Regional Federal da 3ª Região - Presidente da Associação Brasileira de Direito Processual - ABDPRO, Ribeirão Preto, SP, Brasil)*

*Edson Fachin (Ministro do Supremo Tribunal Federal - STF - Universidade Federal do Paraná - UFPR, Curitiba, PR, Brasil)*

*Egon Bockmann Moreira (Universidade Federal do Paraná - UFPR, Curitiba, PR, Brasil)*

*Elias Jacob de Menezes Neto (Universidade Federal do Rio Grande do Norte - UFRN, Natal, RN, Brasil)*

*Eneida Orbage de Britto Taquary (Faculdade Presbiteriana Mackenzie, Brasília, DF, Brasil)*

*Fábio Germano Alves (Universidade Federal do Rio Grande do Norte - UFRN, Natal, RN, Brasil)*

*Gustavo Henrique Justino de Oliveira (Universidade de São Paulo - USP, São Paulo, SP, Brasil)*

*Igor Danilevicz (Universidade Federal do Rio Grande do Sul - UFRGS, Porto Alegre, RS, Brasil)*

*Leila Cuéllar (Procuradora do Estado - Procuradoria-Geral do Estado do Paraná, Curitiba, PR, Brasil)*

*Leonardo Nemer Caldeira Brant (Universidade Federal de Minas Gerais - UFMG; Pontifícia Universidade Católica de Minas Gerais - PUC Minas; Presidente do CEDIN, Belo Horizonte, MG, Brasil)*

*Lúcio Delfino (Universidade de Uberaba - UNIUBE, Uberaba, MG, Brasil)*

*Luis Felipe Salomão (Ministro do Superior Tribunal de Justiça - STJ, Brasília, DF, Brasil)*

*Luiz Claudio Allemand (Centro Superior de Ciências Sociais de Vila Velha - ES; Instituto Brasileiro de Estudos Tributários - ES; Fundação Getulio Vargas - FGV - ES; Faculdade Integradas de Vitória - FDV, Vitória, ES, Brasil)*

*Luiz Gustavo Escórcio Bezerra (Instituto Brasileiro de Estudos do Direito da Energia - IBDE, São Paulo, SP, Brasil)*

*Marco Félix Jobim (Pontifícia Universidade Católica do Rio Grande do Sul - PUC-RS, Porto Alegre, RS, Brasil)*

*Mateus Pereira (Universidade Católica de Pernambuco - UNICAP, Recife, PE, Brasil)*

*Nancy Andrighi (Ministra do Superior Tribunal de Justiça - STJ - Brasília, DF, Brasil)*

*Olavo A. V. Alves Ferreira (Universidade de Ribeirão Preto - UNAERP, Ribeirão Preto, SP, Brasil)*

*Rafael Peteffi da Silva (Universidade Federal de Santa Catarina - UFSC, Florianópolis, SC, Brasil)*

*Rodrigo Reis Mazzei (Universidade Federal do Espírito Santo - UFES, Vitória, ES, Brasil)*

*Selma Maria Ferreira Lemes (Professora de Arbitragem. Integrou a Comissão relatora da Lei de Arbitragem.*

*São Paulo, SP, Brasil)*

**INTERNATIONAL EDITORIAL BOARD**

- President: *Jair Gevaerd* (Pontifícia Universidade Católica do Paraná - PUC-PR, Curitiba, PR, Brasil/ (Pepperdine School of Law - Straus Institute for Dispute Resolution, Los Angeles, California, USA)
- Ajay Thomas* (Faculty of Law, Manav Rachna University, Haryana, India)
- Alberto Elisavetsky* (President of ODR Latinoamerica and Director of the Observatory of Social Conflict, Universidad Nacional de Tres de Febrero - UNTREF, Buenos Aires, Argentina)
- Aleksey V. Minbaleev* (Kufatin Moscow State Law University, Information Law and Digital Technology Department, Moscow, Russia Federation)
- Carolina Barboza Lima Barrocas* (ADR Institute of British Columbia, Vancouver, British Columbia, Canada)
- Christopher R. Drahoszal* (University of Kansas School of Law, Lawrence, Kansas, USA)
- David Macquoid- Mason* (University of Kwazulu-Natal, Centre for Social-Legal Studies, Durban, South Africa)
- Elizaveta A. Gromova* (South Ural State University, Institute of Law, Chelyabinsk, Russia Federation)
- Francisco Gomez-Abelleira* (Universidad Carlos III de Madrid, Madrid, Spain)
- Giampiero D'Alessandro* (Camera Arbitrale - Consiglio dell'Ordine degli Avvocati di Napoli, Naples, Italy)
- Gloria Lim* (Director of the Legal Industry Division, Ministry of Law, Singapore)
- Gracious Timothy Dunna* (Independent Advocate and Adjunct Lecturer, New Delhi, India)
- John Henry Schlegel* (State University of New York Law School at Buffalo, Buffalo, New York, USA)
- Kenneth A. Dubin* (IE Business School, Madrid, Spain)
- Marcelo Rosadilla* (Pepperdine School of Law - Straus Institute for Dispute Resolution, Los Angeles, California, USA)
- Marcio Vasconcellos* (Pepperdine School of Law - Straus Institute for Dispute Resolution e USC Gould School of Law, Los Angeles, California, USA)
- Mario Spangenberg Bolívar* (Facultad de Derecho - Universidad Católica del Uruguay, Montevideo, Uruguay)
- Maureen Arellano Weston* (Pepperdine School of Law - Straus Institute for Dispute Resolution, Los Angeles, California, USA)
- Martha E. Simmons* (Osgoode Hall Law School, Toronto, Ontario, Canada)
- Mohamed Faizal Mohamed Abdul Kadir* (Society of Mediation Professionals, Singapore)
- Nathan O'Malley* (USC Gould School of Law, Los Angeles, California, USA)
- Nazareth Serpa* (Florida International University Law School, Miami, Florida, USA)
- Olivier P. André* (Senior Vice President da International CPR: International Institute for Conflict Prevention & Resolution, New York, New York, USA)
- Paula Costa e Silva* (Faculdade de Direito da Universidade de Lisboa, Lisbon, Portugal)
- Paul Eric Mason* (Silicon Valley Arbitration & Mediation Center, Palo Alto, California, USA)
- Peter Sester* (University of St. Gallen Law School, St. Gallen, Switzerland)
- Prabhpreet Singh* (Manipal University Jaipur School of Law, Jaipur, India)
- Rohit Moonka* (University of Delhi - Faculty of Law, Delhi, India)
- Sai Ramani Garimella* (South Asian University - Faculty of Legal Studies, New Delhi, India)
- Sharon Press* (Mitchell Hamline School of Law, Saint Paul, Minnesota, EUA)
- Spyros Antonelos* (RESOLVE Mediators & ADR Experts Associate, Athens, Greece e MEF Üniversitesi, Estambul, Turkey)
- Sukhsimranjit Singh* (Pepperdine School of Law - Straus Institute for Dispute Resolution, Los Angeles, California, USA)
- Tat Lim* (Aequitas Law LLP - Singapore & Maxwell Mediators, Singapore)
- Thomas P. Valenti* (Thomas P. Valenti Dispute Resolution Office, Chicago, Illinois, USA)
- Tiago Serrão* (Faculdade de Direito da Universidade de Lisboa, Lisbon, Portugal)
- Tianbao QIN* (Wuhan University School of Law, Wuhan, China)
- Toni Jaeger-Fine* (Fordham Law School, New York, New York, USA)
- Tuba Bilecik* (RESOLVE Mediators & ADR Experts Associate, Estambul, Turkey)

# Sumário

Editorial ..... 13

Editorial ..... 15

Guest Editor's Note ..... 17

Introduction to Singapore International Mediation Centre – SIMC ..... 19

## **DOCTRINA**

### ARTIGOS

Mediation in Cambodia: Current Status, Development and Prospects

**Leang Sok** ..... 23

    Concept of 'Mediation' in Confusion with other ADR Approaches ..... 23

    Mediators and Roles of Mediators ..... 24

    Development of Mediation in Cambodia ..... 25

    Mediation within the Non-Government Sector ..... 26

    Growing Trend in the Formulation and Practice of Mediation ..... 27

    Pragmatism and Exploration of Mediation Practice ..... 30

    Mediation Opportunities ..... 30

    The Level of Receptivity to the Singapore Convention on Mediation and the

    Possible Hurdles to Cambodia's Accession to and Ratification of the Convention... 31

    Looking into the Future ..... 32

    Conclusion ..... 33

    References ..... 34

How Court or Legislation Mandated Mediations are Conducted in Hong Kong

**Dr Christopher To** ..... 37

    I      Introduction ..... 37

    II     Mediation in General Civil Cases ..... 39

    III    Case Settlement Conference ..... 41

    IV    Financial Dispute Resolution ..... 44

    V    Children's Dispute Resolution ..... 46

    VI   Proposed Duty Mediator Scheme ..... 48

    VII Conclusion ..... 48

    References ..... 50

Mediation in China – Past, Present and Future

**Sun Wei** ..... 53

    Introduction ..... 53

    I      Chinese Mediation in Context ..... 54

    A      The Fundamentals: Concept and Law ..... 54

|     |  |    |
|-----|--|----|
| B   | The Procedure: How Mediation is Conducted in China .....   | 56 |
| C   | The Enforcement Mechanism.....   | 57 |
| II  | The Development of Mediation in China.....   | 58 |
| A   | The Mediator.....  | 58 |
| B   | Mediation Institutions .....   | 60 |
| C   | Prevalence of Mediation in China .....   | 61 |
| (1) | Mediation as a Mandatory Prelude to Legal Proceedings .....  | 61 |
| (2) | Mediation in China as a Means of Dispute Resolution .....  | 62 |
| D   | The Integration of Mediation with Other Dispute Resolution Mechanism .....                               | 65 |
| III | Singing the Singapore Convention: The Road Ahead .....   | 66 |
| A   | The Singapore Convention: Opportunities and Obstacles.....   | 66 |
| (1) | International Mediations in China.....   | 66 |
| (2) | Enforceability of Settlement Agreements.....   | 67 |
| (3) | Lack of Preservative Measures in the Course of Applying for Enforcement of<br>Settlement Agreements..... | 68 |
| B   | Next Steps .....   | 68 |
| (1) | Future Steps to Incorporate Singapore Convention into the Current Legal System...68                      | 68 |
| (2) | Other Endeavours in the Field of Mediation .....   | 69 |
| IV  | Conclusion.....  | 70 |
|     | References .....   | 70 |

#### Mediation Ecosystem in Indonesia

|   |   |    |
|---|---|----|
| <b>Alexandra Gerungan, Claudio Shallaby Adre, Fahmi Shahab, Raymond Lee</b> ..... | 73  |    |
| A   | Overview of Mediation in Indonesia .....                  | 74 |
| B   | Mediation Environment in Indonesia.....                   | 75 |
| 1   | Court Annexed Mediation and Out-of-Court Mediation.....   | 75 |
| 2   | Mediators and Mediator Certification Agencies.....        | 76 |
| C   | Court Annexed Mediation.....                              | 76 |
| D   | Out of Court Mediation.....                               | 79 |
| a   | Financial Services Sector Disputes.....                   | 79 |
| b   | Consumer Disputes Mediation .....                         | 81 |
| c   | Land Disputes Mediation.....                              | 83 |
| d   | Medical/Health Disputes Mediation .....                   | 83 |
| e   | Mediation in Labor/Industrial Relations Disputes .....    | 84 |
| f   | Intellectual Property Disputes Mediation .....            | 85 |
| E   | Enforcement of Mediation Settlement.....                  | 86 |
| 1   | Court Annexed Mediation Resolution .....                  | 86 |
| 2   | Outside Court Mediation Resolution .....                  | 89 |
| F   | Indonesia and the Singapore Convention on Mediation ..... | 89 |
| G   | Conclusion.....   | 90 |
|   | References .....  | 91 |

#### Mediation in Japan

|  |  |     |
|--|--|-----|
| <b>Yoshihiro Takatori (Yoshi), James Claxton</b> ..... | 93   |     |
|  | Historical Background .....                    | 94  |
|  | Contemporary Conceptions of Mediation.....     | 94  |
|  | Court Mediation in Japan.....                  | 95  |
|  | Conciliation Committees ( <i>chotei</i> )..... | 95  |
|  | Judicial Mediation ( <i>wakai</i> ).....       | 96  |
|  | Private Mediation in Japan.....                | 96  |
|  | International Commercial Mediation .....       | 97  |
|  | Prospects for Mediation in Japan .....         | 98  |
|  | References .....                               | 100 |

## Introduction to Mediation in Malaysia

|   |            |
|---|------------|
| <b>Shanti Abraham .....</b>   | <b>103</b> |
| I      The Concept of Mediation in Malaysia .....   | 103        |
| II     A Brief Look at the Statutory Provisions of the Malaysian Mediation Act 2012 .....   | 104        |
| III    Statutory Protections and Enabling Features of the Act .....   | 104        |
| IV    Mediation in Action in Malaysia.....  | 106        |
| Mediation in Capital Market Matters.....  | 106        |
| Mediation in Family matters.....  | 107        |
| Mediation in Construction Matters .....   | 108        |
| Mediation in Commercial Matters.....  | 108        |
| V    Court-Annexed Mediation v. Private Mediations.....   | 109        |
| VI   How Court or Legislation Mandated Mediations (If Any) Are Conducted<br>in Malaysia .....   | 110        |
| VII   The Popularity of Mediation in Malaysia as a Dispute Resolution Process<br>and the Obstacles to Parties Adopting Mediation as a Means to Resolve<br>Their Disputes..... | 112        |
| VIII   The Extent of Development of the Mediation Ecosystem in Malaysia .....   | 114        |
| A   Local Mediation-Related Legislation.....  | 114        |
| B   The Local Enforceability of Mediated Settlement Agreements and the<br>Procedure for Enforcement .....   | 115        |
| C   Availability of Trained Local Mediators and Mediator Training Bodies .....  | 115        |
| D   Training & Accreditation.....   | 116        |
| E   Availability of Local Accreditation Bodies for Trained Mediators and How the<br>Accreditation System Works .....  | 116        |
| F   Conduct of Mediation.....   | 117        |
| G   Extent of Integration of Mediation with Other Local Dispute Resolution<br>Institutions <i>i.e.</i> Courts/Arbitration Centres.....  | 117        |
| H   Foreseeable Developments in Mediation in the Near Future in Malaysia .....  | 118        |
| I   References .....  | 119        |

## Evolution of Mediation in Singapore

|  |            |
|--|------------|
| <b>Siddharth Jha, Carina Lim .....</b>                                       | <b>121</b> |
| A   Introduction.....  | 122        |
| B   The Mandate for Mediation.....   | 123        |
| C   The Growth of Mediation in Singapore .....                               | 125        |
| C.1   Mediations in Singapore.....   | 127        |
| C.2   Community-Based Mediations.....  | 127        |
| C.3   Court-Based Mediations .....   | 128        |
| D   Private Mediations .....   | 128        |
| E   Singapore's Evolution into an International Dispute Resolution Hub ..... | 131        |
| F   Multi-tiered Clauses, Mixed-modes and Protocols .....                    | 132        |
| G   Mediation & Arbitration .....  | 133        |
| H   Mediation & Litigation .....   | 136        |
| I   Mediation Infrastructure in Singapore .....                              | 138        |
| J   Capacity Building and Accreditation .....                                | 139        |
| K   Future of Mediation.....   | 140        |
| L   References .....   | 141        |

## Mediation in South Korea

|   |            |
|---|------------|
| <b>Sae Youn Kim, Joonhak Choi .....</b>             | <b>145</b> |
| 1      The Concept of Mediation in Korea.....       | 146        |
| 2      The Process of Court-Annexed Mediations..... | 147        |

|   |   |     |
|---|---|-----|
| 3 | The Mediation Ecosystem in Korea.....   | 149 |
| A | Local Mediation-Related Legislation.....  | 149 |
| B | Availability of Trained Local Mediators, Mediator Training and Accreditation Bodies ..... | 149 |
| C | Mediation Venues and the Integration of Dispute Resolution Options in Korea .....         | 150 |
| 4 | Foreseeable Developments in Mediation in the Near Future in Korea .....                   | 150 |
|   | References .....  | 151 |

## Mediation in Sri Lanka

|  |     |
|--|-----|
| <b>Dhara Wijayatilake</b> .....  | 153 |
| Historical Use of Non-Adversarial Dispute Resolution Methods .....               | 153 |
| Mediation – Introduction and Evolution .....                                     | 154 |
| <i>Mediation</i> as Understood in the Sri Lankan Dispute Resolution Regime ..... | 155 |
| The Legal Framework for the Use of Mediation .....                               | 156 |
| The Community Mediation Boards .....   | 156 |
| The Mediation (Special Categories of Disputes) Panels .....                      | 158 |
| The Commercial Mediation Center of Sri Lanka .....                               | 159 |
| Common Features of the Statutes.....   | 160 |
| The International ADR Centre .....   | 162 |
| The Type of Mediation.....   | 162 |
| New Legislation on Mediation for Civil and Commercial Disputes .....             | 163 |
| The Singapore Convention.....  | 163 |
| Prospects for the Expansion of the Use of Mediation .....                        | 163 |
| Conclusion.....  | 164 |
| References .....   | 165 |

## Mediation in Thailand

|  |     |
|--|-----|
| <b>Warathorn Wongsawangsiri</b> .....  | 167 |
| I     The Understanding of “Mediation” in Thailand.....  | 167 |
| A     Court-Annexed Mediation.....   | 168 |
| B     Out-of-Court Mediation.....  | 169 |
| Requirements and Standing of Mediators .....   | 169 |
| a)     Qualifications .....  | 170 |
| b)     Prohibitions.....   | 170 |
| c)     Duties and Powers of a Mediator .....   | 170 |
| d)     Mediator’s Protection.....  | 170 |
| e)     Ethical Standards .....   | 171 |
| Disputes Eligible for Mediation.....   | 171 |
| a)     Civil Disputes .....  | 171 |
| b)     Criminal Disputes .....   | 172 |
| Results of Mediation.....  | 172 |
| a)     Successful Mediation.....   | 172 |
| b)     Unsuccessful Mediation .....  | 172 |
| Enforcement of Settlement Agreement .....  | 172 |
| II     The Popularity of Mediation in Thailand as a Dispute Resolution Process and the Obstacles to Parties Adopting Mediation as a Means to Resolve Their Disputes..... | 173 |
| III     The Prevalence of International Mediation in Thailand .....  | 175 |
| IV     Foreseeable Developments in Mediation in the Near Future within Thailand .....  | 176 |
| References .....   | 177 |

## An Assessment of Commercial Mediation Activities in Vietnam: Advantages and Challenges

**Chau Huy Quang, Cao Dang Duy .....**.....179

|     |  |     |
|-----|--|-----|
| 1   | Perception of Commercial Mediation as a Means of Dispute Resolution<br>in Vietnam and the Obstacles Faced by its Users .....                                   | 180 |
| 1.1 | Out-of-Court/Commercial Mediation.....   | 180 |
| 1.2 | Court-Annexed Mediation.....   | 181 |
| 1.3 | The Limited Use of Commercial ("Out of Court") Mediation in Vietnam .....  | 182 |
| 1.4 | Obstacles to Parties Adopting Commercial Mediation as a Means to Resolve<br>Their Commercial Disputes in Vietnam .....   | 182 |
| 2   | The Prevalence of International Mediation in Vietnam .....   | 184 |
| 3   | Foreseeable Developments in Commercial Mediation within Vietnam in<br>the Near Future .....  | 184 |
| 3.1 | Commercial Mediation Activities Are Encouraged in Vietnam.....   | 185 |
| 3.2 | Increased number of commercial mediation centers and mediators in Vietnam....  | 185 |
| 3.3 | Mediation Training Activities in Vietnam.....  | 186 |
| 3.4 | Promotion and Development Activities Regarding Commercial Mediation .....  | 186 |
| 4   | The Level of Receptivity to the Singapore Convention on Mediation and the<br>Possible Hurdles to Vietnam's Accession to and Ratification of the Convention ... | 187 |
| 4.1 | The Possible Hurdles to Vietnam's Accession to and Ratification of<br>the Singapore Convention on Mediation.....   | 187 |
| 4.2 | Progress and Level of Receptivity to the Singapore Convention on Mediation .....   | 188 |
| 5   | Conclusion .....   | 189 |
|     | References .....   | 189 |

## Arbitration with Chinese Characteristics and Its Long Pathway towards International Standards

**Assist. Prof., Dr Magdalena Łagiewska .....**.....191

|     |   |     |
|-----|---|-----|
| 1   | Introduction.....   | 191 |
| 2   | Chinese Arbitration Law in View of the UNCITRAL Model Law .....                             | 193 |
| 2.1 | Discrepancies between the 1985 UNCITRAL Model Law and Chinese<br>Arbitration Law .....      | 193 |
| 2.2 | <i>Ad hoc</i> Arbitration within the Pilot Zones .....                                      | 195 |
| 2.3 | Arb-Med-Arb Mechanism in China .....  | 197 |
| 3   | Shanghai Pilot Free Trade Zone: Halfway to Total Liberalization.....                        | 198 |
| 4   | Proposed Amendments to Chinese Arbitration Law and their Impact on<br>Foreign Parties ..... | 200 |
| 5   | Conclusion .....  | 202 |
|     | References .....  | 202 |

## Mediation Application Areas in the Republic of Belarus and Essentials of Family Mediation Legal Regulation

**Maryna V. Andriyashka, Tatsiana Khaletskaya, Marina Gorbatova .....**.....205

|     |   |     |
|-----|---|-----|
| 1   | Introduction.....   | 206 |
| 2   | Legal Framework of Mediation Standards.....   | 206 |
| 2.1 | Universal Standards of Legal Framework for Mediation .....                              | 206 |
| 2.2 | Regional Standards of Legal Framework for Mediation .....                               | 207 |
| 3   | Areas and Premises for the Mediation Implementation into<br>Belarusian Legislation..... | 208 |
| 3.1 | Groups of Mediation Application Areas in the Republic of Belarus .....                  | 208 |
| 3.2 | Premises for the Mediation Implementation into Belarusian Legislation.....              | 211 |

|  |   |            |
|--|---|------------|
| 3.2.1  | Creating Conditions for the Realization of the Right to Judicial Protection ..... | 211        |
| 3.2.2  | Reducing the Burden on the Judicial System and Judges.....                        | 212        |
| 3.2.2.1  | Consideration of Disputes Arising from Marital and Family Relations .....         | 212        |
| 3.2.2.2  | Consideration of Criminal Cases .....   | 216        |
| 3.2.3  | Increasing the Independence and Responsibility of the Disputing Parties.....      | 218        |
| 4  | Mediation in Resolving Family Disputes in the Republic of Belarus.....            | 219        |
| 4.1  | Advantages of Family Mediation .....  | 219        |
| 4.2  | Disadvantages of Family Mediation .....   | 220        |
| 5  | Conclusion.....   | 225        |
|  | References .....  | 225        |
| <br>Book Review  |   |            |
| <i>Dispute Board Manual: A Guide To Best Practices And Procedures</i>          |   |            |
| <b>Daniel Brantes Ferreira, Elizaveta A. Gromova, Bianca O. de Farias.....</b> |   | <b>229</b> |
| 1  | Introduction.....   | 230        |
| 2  | The Book's Content .....  | 231        |
| 3  | The Analysis.....   | 232        |
| 3  | Conclusion.....   | 233        |
|  | References .....  | 233        |
| INSTRUÇÕES PARA OS AUTORES.....  |   | 235        |