Welcome to the first edition of our new ADR in Asia guide. This biannual publication provides you with essential practical guidance on various processes falling under the banner of Alternative Dispute Resolution (ADR). We report on recent developments and industry trends across the region drawing on the expertise of our award-winning global ADR practice.

From our market leading ADR research in 2007, to our lead role in a recent landmark convention on Shaping the Future of International Dispute Resolution in London, Herbert Smith Freehills has long been at the forefront of thought leadership in ADR. This guide extends the debate to Asia where our clients are increasingly looking to save time and cost and minimise business disruption in the resolution of their disputes.

ADR is not susceptible to precise definition but generally encompasses any structured dispute resolution process outside traditional litigation and arbitration. In the USA, arbitration is more likely to be included within references to ADR. Arbitration as a stand-alone process is not addressed in this guide.

Why launch this guide now? The decision was two-fold:

› Despite its obvious benefits, ADR remains a relatively untapped resource in many Asian countries. We would like to raise its profile and ensure that organisations are aware of all the dispute resolution tools at their disposal – beyond litigation and arbitration.

› It is five years since mediation (the most commonly used ADR process) was embedded in civil litigation procedure in Hong Kong through Practice Direction 31 (PD 31). We feel it is time to get our clients’ views on how they are using mediation, what they believe works and what does not.

In this edition, on page 2, we introduce the most commonly encountered ADR processes and summarise their use in Asia. This quick reference guide arms you with the basics to better understand the different ADR processes and when they are used.

On page 5, we provide greater detail on mediation, in particular its use in Hong Kong. Here you will find essential information on the law, as well as practical advice on mediator selection, mediation preparation, when to mediate and what to expect from the mediation day and your role in it.

We report on our recent client survey on mediation usage in Hong Kong on page 15. Five years from the date when the Civil Justice Reform (CJR) placed mediation at the heart of Hong Kong’s litigation landscape, we have canvassed the views of 30 of our leading international clients from a range of sectors on their use of ADR, in particular mediation. We wish to thank those organisations who supported our research for being generous with their time and their insights. We hope the outputs better inform mediation users in Hong Kong and across Asia to help bridge the ‘knowledge gap’ we have identified across certain parts of the user community.

Looking ahead, in our second edition we will examine ArbMed, a hybrid ADR process which has now been adopted by numerous arbitration centres in Asia, yet remains under utilised in practice. We will also address current market trends in ADR in other Asian jurisdictions.

Please do not hesitate to contact us if you have any questions about ADR in Asia – we welcome the chance to work with you to resolve or, better still, avoid, your commercial disputes.

ENDNOTES