CONTENTS

Foreword v
Introduction vii
Profiles of contributors xi
Contents xvii
Table of Cases xxi
Table of Statutes xxiii
Table of Statutory Instruments xxv
Table of International Treaties and Conventions xxvii

1. ADR: What is it and what are the pros and cons?
   Introduction 1.1
   What is ADR? 1.2
   How does it work? 1.3
   The advantages of ADR 1.4
   The disadvantages of ADR 1.5
   Why is ADR seldom used? 1.6

2. Banking and Finance Disputes
   Introduction 2.1
   Banks and dispute resolution 2.2
   Types of disputes involving banks and financial institutions 2.3
   Trends 2.4
   What is ADR? 2.5
   Why have banks traditionally favoured litigation over ADR? 2.6
   Advantages of ADR and in particular, mediation, in banking disputes 2.7
   The court’s powers in relation to ADR 2.8
   ADR clauses 2.9
   The mediation process 2.10
   The right time to mediate 2.11
   Change of attitude by the banks and current practice of U.K. clearing banks 2.12
   Banking mediation in action 2.13
   Other methods of resolving banking disputes 2.14
## Contents

3. Commercial Property Disputes
   - Introduction 3.1
   - "Transaction" or "Relationship" dispute 3.2
   - The parties and their perceptions 3.3
   - History makes us litigious 3.4
   - Litigate or mediate? 3.5
   - Rules of presentation of the case—impress the client, impress the mediator 3.6
   - What went wrong and why?—how did we end up here? 3.7
   - The mediation—plenary—caucus—settlement 3.8
   - Specific problems—special skills—the benefits of experience 3.9
   - Consider emotions, needs and expectations 3.10
   - Moving on from here 3.11

4. Employment Disputes
   - Introduction to ADR 4.1
   - The ADR options 4.2
   - What ADR offers in contrast to litigation 4.3
   - ADR providers 4.4
   - Advantages of mediation over other ADR processes 4.5
   - How mediation works 4.6
   - Appendix to Chapter 4 4.7

5. Franchising Disputes
   - Introduction 5.1
   - Effective communication between franchisors and franchisees 5.2
   - Types of dispute 5.3
   - Role of court 5.4
   - Limitations of litigation in franchise cases 5.5
   - Arbitration 5.6
   - Mediation 5.7
   - Choice of mediator 5.8
   - Venue of mediation 5.9
   - Involvement of professional advisers 5.10
   - Staggered mediation 5.11
   - Preparation for the mediation 5.12
   - Structure of the mediation 5.13
   - Settlement agreement 5.14
   - Conclusions 5.15

6. Insolvency Disputes
   - The statutory framework 6.1
   - Types of dispute 6.2
   - The role of courts and tribunals 6.3
   - The role of ADR generally and in particular the advantages of mediation over other forms of ADR 6.4
The rôle of straightforward negotiation 6.5
The rôle of médiation 6.6
Conclusion 6.7

7. Insurance Related Disputes (Including Reinsurance and Professional Indemnity)
   Introduction 7.1
   Médiation of claims 7.2
   Médiation and reinsurance disputes 7.3
   Professional indemnity claims 7.4
   Appendix to Chapter 7 7.5

8. IT Disputes
   Introduction 8.1
   Types of IT dispute 8.2
   Role of courts and tribunals 8.3
   Role of ADR generally—advantages of médiation or other forms of ADR 8.4
   The rôle of médiation 8.5
   Ten key points to remember 8.6

9. Landlord and Tenant Disputes
   Introduction 9.1
   The types of landlord and tenant disputes amenable to ADR 9.2
   The role of courts and tribunals 9.3
   The rôle of ADR generally and the advantages of médiation over other forms of ADR 9.4
   The role of negotiations 9.5
   The role of médiation 9.6

10. Partnership and Professional Practice Disputes
    Introduction 10.1
    Types of disputes 10.2
    The role of the court and tribunals 10.3
    The role of ADR generally and in particular the advantages of médiation over other forms of ADR 10.4
    The role of straightforward negotiations 10.5
    Practical considerations when mediating partnership and professional practice disputes 10.6
    Ten key points to remember 10.7

11. Shipping Disputes
    Types of disputes 11.1
    Resolving shipping disputes in courts and tribunals 11.2
    The role of courts and tribunals 11.3
    The role of ADR generally and in particular the advantages of médiation over other forms of ADR 11.4
The rôle of médiation 11.5
Ten key points to remember 11.6

12. Probate and Trust Disputes
   Why médiate? 12.1
   A death in the family 12.2
   Enter the lawyers 12.3
   Litigation commences 12.4
   The médiation process 12.5
   Mediation commences 12.6
   Why a settlement was reached 12.7
   Using médiation and other ADR processes 12.8

Index 247