

# **ARB-MED-ARB (AND MSAs): A WHOLE WHICH IS LESS THAN, NOT GREATER THAN, THE SUM OF ITS PARTS?**

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## **ABSTRACT**

*Mediation affords parties to international commercial disputes an opportunity to settle their differences in an informal and non-adversarial setting and on mutually acceptable terms. Nonetheless parties may be reluctant to use mediation because agreements arrived at in mediation (mediated settlement agreements or MSAs) are not widely or uniformly enforceable. In an attempt to overcome this problem, parties who wish to mediate may agree to participate in a process known as arb-med-arb. This process, which is formed by amalgamating elements of mediation and arbitration, may enable parties to take advantage of various systems of arbitration rules which allow a settlement reached during arbitration to be recorded and enforced as a consent award. According to some commentators, "hybridization" enables the parties to have "the best of both worlds". In fact, the parties may sacrifice key features of arbitration and mediation such that the procedural integrity of both processes is compromised. This article explores the strengths and weaknesses of a number of hybrid dispute resolution processes with a focus on arb-med-arb and its foundational process, med-arb. It considers whether parties are getting less than, not more than, the sum of its parts, when they resort to arb-med-arb for the purpose of enforcing MSAs.*

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