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# Kluwer Mediation Blog

## Part 1 – Empowering the Growth of International ADR: The supply side and the demand side can do it together

Michael Leathes (Corporate counsel & author) · Friday, June 28th, 2013

This is a 3-part post on why and how a little focused collaboration among practitioners and users can give ADR a tremendous boost.

### ADR Taboos

In recent years, corporate users of ADR services have demanded greater transparency into the skills, experience and suitability of ADR providers and the adoption of stronger professional ethical standards and disciplinary processes. These calls are turning into dissatisfaction. The markets serving corporate client needs can, without great effort or cost, address the user demand quickly, effectively and economically worldwide.

In May 2007, Michael McIlwrath of GE Oil & Gas published an article in *Arbitration*, the journal of the Chartered Institute of Arbitrators, entitled *Grading the Arbitrator*. He proposed that, using a questionnaire, parties should give feedback to arbitrators on how they managed and handled the process. He suggested that, in an appropriate way, that feedback should be publicly available as an aid to the notoriously difficult but critical task of selecting competent, suitable arbitrators. Arbitrators claimed the quality of the feedback could be influenced by outcome bias, but Mr McIlwrath suggested that this could be overcome by a system of quality control. In [articles](#) in 2005 and 2006, Professor Catherine Rogers at Penn State Law had floated similar ideas, including a fee-based service to which parties could subscribe. The arguments in favor of a feedback scheme extended beyond facilitating arbitrator selection and extended to improving the predictability, and therefore the reputation, of arbitration.

In 2008, the [International Mediation Institute](#) (IMI) launched its mediator certification scheme, at the core of which is an independently-prepared Feedback Digest based on a Feedback Request Form and an identification of the Code of Conduct and Disciplinary Process to which mediators publicly subscribe. About 400 mediators are now IMI Certified and there are 26 Qualifying Assessment Programs in 16 countries that enable ADR institutions and trainers to qualify mediators for IMI Certification, with more in the pipeline.

The Milan Chamber of Commerce, for example, has proposed “anonymized” arbitral awards to give users greater insight into the decisions taken in arbitrations conducted under the auspices of that institution. The fact is that users need greater transparency and higher standards in the delivery of all ADR services.

The international mediation field provides useful pointers. The IMI Certification Scheme, launched in 2008 by users in collaboration with international ADR providers, initially met with skepticism from the market<sup>6</sup>. However, the prominent presence on the IMI Board of international corporate users caused skeptics to think again. About 400 mediators now fully IMI Certified with user Feedback Digests embedded in their profiles and a declaration of the Code of Professional Conduct and disciplinary process to which they subscribe.

ADR practitioners are not talking much about the need to change, but there have been recent calls in international arbitration circles for greater transparency of key indicia of provider performance and tomorrow's post will capture some calls for change from the supply side.

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