

# Kluwer Mediation Blog

## Dispute resolution clauses in mediated settlement agreements

Rafal Morek (CMS) · Saturday, April 19th, 2025

In the case of [Destin Trading Inc v Saipem SA \[2025\] EWHC 668 \(Ch\)](#) (24 March 2025), the English High Court (Chancery Division) held that the dispute resolution clause contained in a settlement agreement superseded the arbitration clause in a previous contract concluded between the parties. This decision underscores the importance of mediators discussing with the parties whether dispute resolution clauses in settlement agreements and prior contracts should be consistent. If they are to be different, they should also discuss whether the settlement agreement is intended to supersede the earlier agreement in this regard.

### Settlement agreement

The parties had a longstanding commercial partnership, with their contract relying on general terms and conditions that included a dispute resolution provision for ICC arbitration seated in London. After a dispute arose regarding amounts allegedly due under the contract, the parties entered into a settlement agreement to settle the claims and terminate the contract, agreeing to “release and forever discharge” each other from their contractual obligations. The settlement agreement contained a jurisdiction clause whereby the parties agreed to “settle any dispute arising out of or in connection with” the settlement agreement in the English courts.

### Court Proceedings in England

In July 2024, one of the parties commenced a claim in the English courts, alleging that the other party had induced it to enter into the settlement agreement through fraudulent or negligent misrepresentation. The question for the court was whether the dispute between the parties was subject to the exclusive jurisdiction of the English courts under the settlement agreement or to London-seated ICC arbitration under the dispute resolution provisions of the contract.

### High Court’s Decision

The court refused to stay the proceedings and refer the parties to arbitration. It found that where dispute resolution provisions in a settlement agreement are inconsistent with those contained in a previous contract, the settlement agreement should generally be construed as superseding the earlier agreement. This is because it is usual for the “centre of gravity” to have changed such that the relationship is centered on the settlement agreement. The court relied on the leading case on this principle, [Monde Petroleum SA v. WesternZagros Limited](#) (22 January 2015), where the High Court held that the jurisdiction clause in a termination agreement between the parties superseded an arbitration clause in a prior consultancy agreement in favour of ICC arbitration.

## Practical Implications

This decision is of significant practical value for mediators and parties entering into settlement agreements to resolve their disputes. The default position is that the dispute resolution clause in a relationship-ending settlement agreement would supersede the dispute resolution provision in the underlying contract, particularly where the parties have also incorporated an entire agreement clause and mutually released each other from their obligations under previous contracts. In other factual backgrounds other circumstances may also be relevant.

## Conclusion

Mediators should discuss with parties settling their disputes whether they would like to apply an identical dispute resolution clause as in the underlying contract. Where parties opt for a different dispute resolution provisions, they should be clear as to the scope and application of the new clause to avoid uncertainty and limit the scope for any unwanted jurisdictional disputes. If the dispute resolution clause in a settlement agreement is intended to supersede a different and previously agreed dispute resolution clause in the underlying contract, this should be expressly stated in the settlement agreement.

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The graphic features a dark background with vibrant, glowing blue and red lines representing digital data or circuitry. A large, metallic gavel is positioned diagonally across the center, its head resting on a circular base. The gavel and the background elements are overlaid with a grid of small, glowing dots, giving it a high-tech, futuristic appearance.

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