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The Connection Between Commercial Arbitration and Mediation in China—From the Changes in the Provisions of BAC Arbitration Rules

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Abstract. During the revision of the Arbitration Law, there was discussion on multi-modal connections between commercial arbitration and mediation (coexistence of both arbitral tribunal mediation and extra-arbitration mediation). The final approach adopted a single conservative stance (arbitration tribunal mediation). However, the possibility of multiple changes in future revisions of the Arbitration Law cannot be ruled out. The introduction of the Commercial Mediation Ordinance is a pioneering move. It regulates commercial mediation activities and commercial mediation organizations. However, it only stipulates the judicial confirmation procedure for commercial mediation agreements and does not provide for an arbitration confirmation procedure for such agreements, leaving some gaps to be addressed in the future. Therefore, the changes in the provisions of the Beijing Arbitration Commission Arbitration Rules may represent a partial "preliminary trial" and continuous adjustments, with the intention of incorporating them into the Arbitration Law and the Commercial Mediation Ordinance when the timing is right. Accordingly, this article not only reviews the evolution of the provisions in the Beijing Arbitration Commission Arbitration Rules, but also predicts potential future revisions of the Arbitration Law and the Commercial Mediation Ordinance.

Keywords: Arbitration Tribunal Mediation, Independent Mediation, Commercial Mediation, Arbitration Confirmation, "Mediation Content Shall Not Be Quoted" Rule

1. Introduction

The choice to study the connection between commercial arbitration and mediation from the perspective of the "Beijing Arbitration Commission's Changes in the Arbitration Rules" is based on the following considerations: First, in 2025, there were two significant legislative developments in the fields of commercial arbitration and commercial mediation, namely the revision of the Arbitration Law and the introduction of the Commercial Mediation Ordinance, which will undoubtedly play a crucial role in promoting both research and practice. The connection between commercial arbitration and commercial mediation represents a relatively important but also broad research direction. The specific research topic still needs to be narrowed down. Second, the Beijing Arbitration Commission (hereinafter referred to as BAC) is a benchmark institution among

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arbitration organizations in China. Due to geographical proximity and some previous fortunate coincidences, I once went to BAC for listening lectures many times in some years, which greatly broadened my horizons. I am grateful for the generosity of BAC.

2. Arbitration law: the single-connection mode of commercial arbitration and mediation

2.1. The repeated revisions of the Arbitration Law and the continued references to the arbitral tribunal mediation system

In Arbitration Law (2025 Revision), Article 64 stipulates the arbitration tribunal mediation system, and Article 65 stipulates the arbitration mediation award.

According to Paragraph 1 of Article 64, arbitration-mediated settlement has two meanings: First, in commercial arbitration, the connection model between arbitration and mediation is "mediation within arbitration", meaning mediation occurs during the commercial arbitration process. Second, it refers to "mediation within arbitration where the mediator and arbitrator are not separated"—the arbitral tribunal conducts both the arbitration and mediation procedures. Paragraph 2 of Article 64 stipulates the legal effect of the settlement agreement. Article 65 stipulates the procedure for the settlement agreement to take effect.

Looking at the multiple amendments of the Arbitration Law, it can be observed that the legal provisions on the arbitral tribunal mediation system and the arbitral mediation award have remained virtually unchanged (see Table 1). This clearly shows that over the past 30 years, China's Arbitration Law has consistently maintained its recognition of the arbitration tribunal mediation system and the arbitration mediation award.

Table 1. The legal provisions on the arbitral tribunal mediation system and the arbitral mediation award in the Arbitration Law

Law	arbitration tribunal mediation	arbitration mediation award
Arbitration Law (1994)	Article 51	Article 52
Arbitration Law (2009 Revision)	Article 51	Article 52
Arbitration Law (2017 Revision)	Article 51	Article 52
Arbitration Law (2025 Revision)	Article 64	Article 65

2.2. Extra-arbitration mediation has not entered the Arbitration Law

In 2021, Arbitration Law (Revised Draft for Comments) stipulates the arbitration tribunal mediation system in Article 68 and the arbitration mediation award in Article 71. In addition, Article 69 of Arbitration Law (Revised Draft for comments) stipulates the extra-arbitration mediation system. It includes two situations: First, the parties conduct mediation before the arbitration tribunal is formed. Second, the parties voluntarily choose a mediator outside the arbitration tribunal to mediate after the tribunal has been formed. As long as the parties reach a mediation agreement through extra-arbitration mediation, the follow-up procedures include two options: First, the parties can request the formation of an arbitral tribunal, which will issue a mediation statement, or an arbitral award based on the content of the mediation agreement. Second, the parties can withdraw the arbitration application. Article 70 of Arbitration Law (Revised Draft for Comments) stipulates the arbitration confirmation procedure. After a mediation agreement is reached through extra-arbitration mediation, the parties may apply for arbitration confirmation.

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In 2024, Article 64 of Arbitration Law (Revised Draft) stipulates the arbitral tribunal mediation system. Article 65 stipulates the arbitral mediation award. But Arbitration Law (Revised Draft) didn't stipulate the extra-arbitration mediation system or the arbitration confirmation procedure. Arbitration Law (2025 Revision) continues the provisions regarding the arbitral mediation system and arbitral mediation award. Arbitration Law (2025 Revision) also does not include the extra-arbitration mediation system or the arbitration confirmation procedure.

3. BAC Arbitration Rules: the multi-connection mode of commercial arbitration and mediation

In 2025, BAC adopted Domestic Arbitration Rules. Article 57 stipulates arbitral tribunal mediation. Article 58 stipulates independent mediation. Looking back at the multiple revisions of the BAC Arbitration Rules, it can be seen that the mode of connection between commercial arbitration and mediation has gradually evolved from a single-connection mode (arbitral tribunal mediation) to the multi-connection mode (coexistence of both arbitral tribunal mediation and independent mediation).

3.1. The continuation and differing manifestations of the arbitration tribunal mediation system in the various revisions of the BAC Arbitration Rules

BAC promulgated Arbitration Rules in 1995. In this rule, Article 38 stipulates arbitration tribunal mediation, whose content is as the same as Article 51 of the Arbitration Law (1994). Article 39 stipulates arbitration mediation award, whose content is also as the same as Articles 52 of the Arbitration Law (1994).

BAC revised Arbitration Rules in 1996, 1997, 1998, 1999, 2001, 2004, 2008, 2015, 2019, 2022, 2025. After many revisions of the BAC Arbitration Rules, we can find that the legal provisions of arbitration tribunal mediation and arbitration mediation award show a continuous state but changed (see Table 2).

Table 2. The legal provisions on the arbitral tribunal mediation system and the arbitral mediation award in the BAC Arbitration Rules

BAC Arbitration Rules	arbitration tribunal mediation	arbitration mediation award
BAC Arbitration Rules (1995)	Article 38	Article 39
BAC Arbitration Rules (1996 Revision)	Article 40*	Article 41
BAC Arbitration Rules (1997 Revision)	Article 44	Article 45
BAC Arbitration Rules (1998 Revision)	Article 44	Article 45
BAC Arbitration Rules (1999 Revision)	Article 45	Article 46
BAC Arbitration Rules (2001 Revision)	Article 56	Article 58
BAC Arbitration Rules (2004 Revision)	Article 38*	
BAC Arbitration Rules (2008 Revision)	Article 39*	
BAC Arbitration Rules (2015 Revision)	Article 42*	
BAC Arbitration Rules (2019 Revision)	Article 43	
BAC Arbitration Rules (2022 Revision)	Article 43	
BAC Domestic Arbitration Rules (2025 Revision)	Article 57*	

Article 40 of BAC Arbitration Rules (1996 Revision) has two differentiated expressions: First, there are two ways for the arbitral tribunal to initiate mediation — either at the request of the parties

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or with the parties' consent. Second, it sets forth the "Mediation Content Shall Not Be Quoted" Rule.

Article 38 of BAC Arbitration Rules (2004 Revision) uses the serial numbers of (1), (2), (3) and (4). Article 39 of BAC Arbitration Rules (2008Revision) uses the title of "Mediation by the Arbitration Tribunal".

Article 42 of BAC Arbitration Rules (2015 Revision) makes two amendments: First, after reaching a mediation agreement, the parties may withdraw the arbitration application; they may also request the arbitral tribunal to issue a mediation statement or an award. Both are fine. Second, if there are textual errors, calculation errors, or other errors in the mediation statement, the parties have the right to request a correction of the mediation statement. The arbitral tribunal may also proactively make corrections to the errors in the mediation statement.

Article 57 of BAC Domestic Arbitration Rules (2025 Revision) adds the content related to the arbitration period.

3.2. The proposal and continuation of Independent Mediation in many revisions of the BAC Arbitration Rules

After many revisions of the BAC Arbitration Rules, we can find that the legal provisions of Independent Mediation show a continuous state (see Table 3).

Table 3. The legal provisions on independent mediation in the BAC Arbitration Rules

BAC Arbitration Rules	Independent Mediation
BAC Arbitration Rules (2008 Revision)	Article 40
BAC Arbitration Rules (2015 Revision)	Article 43*
BAC Arbitration Rules (2019 Revision)	Article 44
BAC Arbitration Rules (2022 Revision)	Article 44
BAC Domestic Arbitration Rules (2025 Revision)	Article 58

Article 40 of BAC Arbitration Rules (2008 Revision) first stipulates separate mediation, characterized by "mediation by a mediator during the arbitration process", which falls under "mediation separate from the arbitrator in arbitration" — the arbitral tribunal presides over the arbitration proceedings, while the mediator presides over the mediation proceedings.

Article 43 of BAC Arbitration Rules (2015 Revision) has been revised to the title of independent mediation. It also mentions the "Beijing Arbitration Commission Mediation Center" (hereinafter referred to as "BAC Mediation Center"), meaning that mediation is conducted by a mediator from the BAC Mediation Center. Correspondingly, Article 2 of the Beijing Arbitration Commission Mediation Center Mediation Rules (hereinafter referred to as "BAC Mediation Center Mediation Rules") stipulates: "Mediation by the arbitration tribunal is not subject to these mediation rules." In addition, Article 43 of BAC Arbitration Rules (2015 Revision) sets out a system for arbitration confirmation. After mediation is carried out by a mediator from the BAC Mediation Center and a mediation agreement is reached, the parties may jointly request the arbitration tribunal to issue a mediation statement or award.

3.3. BAC Fast-Track Rules stipulates an arbitration confirmation procedure

In 2025, BAC adopted Fast-Track Rules for Arbitration-Mediation Coordination (hereinafter referred to as "Fast-Track Rules"). In this rule, Article 2 stipulates that BAC Fast-Track Rules is a

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special rule of the BAC Arbitration Rules. Article 3 stipulates an arbitration confirmation procedure.

Arbitration confirmation procedure means that mediation by a third-party institution first and followed by arbitration confirmation by BAC. The mediator is a third-party organization, including: mediation departments within trade associations, commercial mediation organizations, BAC Mediation Center, etc. Then, does the mediator include court? I think the answer is no. Why? According to the Civil Procedure Law, if the parties reach a mediation agreement through court mediation, the court can issue a mediation statement directly.

4. Convergence system under BAC Domestic Arbitration Rules, BAC Mediation Center Mediation Rules and BAC Fast-Track Rules

4.1. Arbitration Tribunal Mediation and Independent Mediation

BAC Domestic Arbitration Rules (2025 Revision) stipulates two mediation modes: arbitration tribunal mediation and independent mediation.

In arbitration tribunal mediation, the arbitration tribunal preside both arbitration procedure and mediation procedure. So, mediators and arbitrators are not separated. Many scholars even classify this combined mediation-arbitration procedure as a "Same Neutral Med-Arb" procedure [1]. Some people may criticize arbitration tribunal mediation. The reason for criticism is: Will arbitrators force mediation out of their own preferences? If the parties compromise in mediation but fail to reach a mediation agreement, will this compromise adversely affect the subsequent arbitration procedure? Would it be fairer to separate the arbitrator from the mediator? However, the advantages of arbitration tribunal mediation cannot be ignored. First, the arbitral tribunal has already gained a certain understanding of the facts of the case during the arbitration process, which is more conducive to ensuring a thorough investigation of the facts and a clear distinction between right and wrong in the mediation. Second, the tribunal's involvement in mediation reflects efficiency, as it respects the parties' right to dispose of the matter while avoiding undue delays in the arbitration process.

In independent mediation, there are two key terms: First, does it only mean mediation occurs during the arbitration procedure, or does it also include mediation occurs before the arbitration procedure? In other words, does independent mediation include pre-arbitration mediation? The answer is yes. Second, the mediator comes from the BAC Mediation Center. BAC provides Panel of Arbitrators. The parties may select arbitrators from the Panel of Arbitrators; they may also choose arbitrators from outside the Panel of Arbitrators. BAC Mediation Center provides Panel of Mediators. The parties may select mediators from the Panel of Mediators; they may also choose mediators from outside the Panel of Mediators.

4.2. Commercial Mediation and Independent Mediation

In 2025, State Council adopted the Commercial Mediation Ordinance. Commercial mediation is essentially a dispute resolution hosted by a third party, which has the characteristics of professionalism, impartiality and neutrality, and its value is mainly reflected in the prevention and resolution of disputes, rather than the economic benefits of commercial mediation organizations [2]. Therefore, commercial mediation organizations do not carry out commercial mediation activities for profit.

China's commercial mediation organizations are mainly private non-enterprise units, in addition, many commercial mediation organizations are set up within chambers of commerce, business associations, lawyers' associations, and law firms [3]. BAC Mediation Center is "a non-profit

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organization to provide commercial mediation services, organized by BAC Office". The Character of BAC Mediation Center is a commercial mediation organization affiliated with the arbitration institution (see Figure 1).

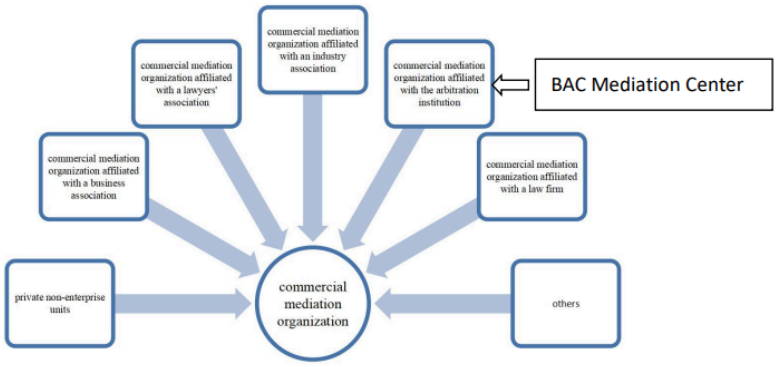

Figure 1. The character of BAC Mediation Center

As a commercial mediation organization, the parties may apply for commercial mediation to BAC Mediation Center. Under BAC Domestic Arbitration Rules, the parties may also apply for independent mediation to BAC Mediation Center. What is the relationship between independent mediation and commercial mediation?

The background of the emergence of independent mediation is that the Arbitration Law does not provide for extra-arbitration mediation. There is also no relevant legislation on commercial mediation. So, BAC has attempted and explored independent mediation. Independent mediation was originally called separate mediation, which first appeared in BAC Arbitration Rules (2008 Revision). During the arbitration process of the case, both parties may apply to BAC for mediation in accordance with the BAC Mediation Rules. So, separate mediation only happens during the arbitration procedure.

If parties without an arbitration agreement apply to an arbitration commission for mediation of a civil dispute, the mediation organization specifically established by the arbitration commission shall mediate in accordance with fair and neutral mediation rules. According to this clause, even if no arbitration agreement has been reached, the parties can mediate in Mediation Organizations in Arbitration Institutions.

BAC Mediation Center was established in 2011. According to Article 2 of BAC Mediation Center Mediation Rules, BAC Mediation Center carries out mediation services. The parties can apply for mediation without an arbitration agreement.

It was officially named independent mediation in BAC Arbitration Rules (2015 Revision). Independent mediation doesn't include arbitration tribunal Mediation. Different from the separate mediation, independent mediation can happen "during the arbitration procedure" and "before the arbitration procedure". Independent mediation combines arbitration services and mediation services, making it convenient for parties to resolve disputes in a "one-stop" manner.

In 2025, at the national level, the promulgation of the Commercial Mediation Ordinance can be seen as a preliminary measure taken by China to implement the Singapore Convention. Subsequent considerations need to focus on the coordinated development of domestic and international commercial mediation activities. Therefore, from the scope of application, commercial mediation applies nationwide, while independent mediation applies to BAC (see Figure 2).

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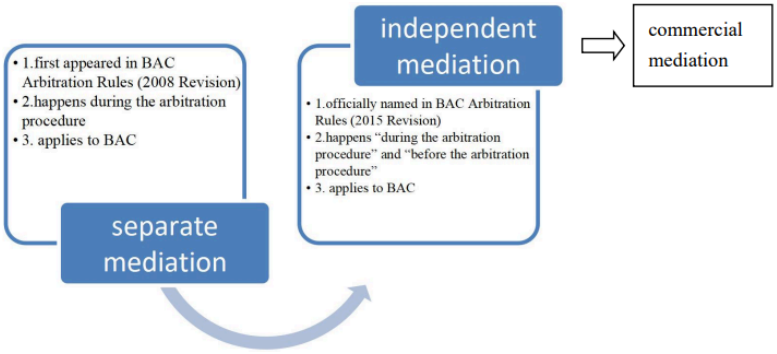

Figure 2. The relationship between independent mediation and commercial mediation

4.3. Arbitration confirmation procedure

BAC Domestic Arbitration Rules (2025 Revision) requires the parties to start an arbitration confirmation procedure on the basis of Fast-Track Rules.

When independent mediation happens during the arbitration procedure, concrete steps of the arbitration confirmation procedure are as follows: (1) before or after a dispute arises, the parties reach an arbitration agreement. (2) Then the parties first apply for arbitration to BAC, and during the arbitration process, the parties apply for mediation to BAC Mediation Center. (3) After mediation by a mediator, the parties reach a mediation agreement, and finally, the parties apply to the arbitration tribunal for arbitration confirmation. (4) At last, the arbitral tribunal makes a mediation statement or award (see Figure 3).

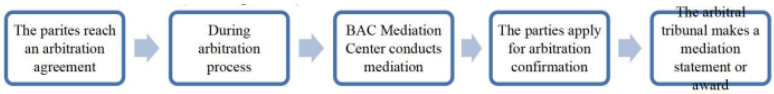

Figure 3. (When independent mediation happens during the arbitration procedure) concrete steps of the arbitration confirmation procedure

When independent mediation happens before the arbitration procedure, concrete steps of the "arbitration confirmation procedure" are as follows: (1) the parties apply to BAC Mediation Center for mediation. After mediation by a mediator, the parties reach a mediation agreement. (2) BAC Mediation Rules requires the parties to reach an arbitration agreement before them start an arbitration confirmation procedure (see Figure 4).

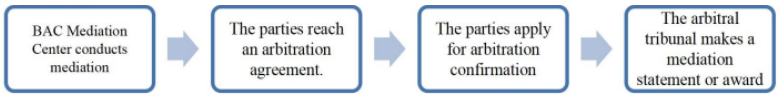

Figure 4. (When independent mediation happens before the arbitration procedure) concrete steps of the arbitration confirmation procedure

5. "Mediation content shall not be quoted" rule

5.1. Meaning of the "Mediation content shall not be quoted" rule

BAC Domestic Arbitration Rules (2025 Revision) stipulates the "mediation contents shall not be quoted" rule under the mode of arbitration tribunal mediation. BAC Mediation Rules stipulates the"mediation contents shall not be quoted" rule under the mode of independent mediation.

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The logic of the "Mediation content shall not be quoted" rule is: in arbitration tribunal mediation or in independent mediation, compromise by the parties to reach a mediation agreement cannot be cited in subsequent arbitration proceedings, judicial proceedings, or any other procedures. The "Mediation content shall not be quoted" rule includes the connection of two procedures: one is a mediation procedure in the early stage, and the other is an arbitration procedure or judicial procedure in the later stage.

5.2. Compromise does not constitute self-admission

Facts recognized during mediation are those that the parties no longer dispute or admit after reaching a compromise. Compromise in mediation is a concession. Compromise can only be a partial abandonment and automatic reduction of substantive rights in one's own litigation, which cannot be understood as "compromise means not taking the facts of the case seriously" [4]. The parties give up or diminish their substantive rights based on the pursuit or yearning for reaching a mediation agreement, so that some facts are no longer debated or recognized, but it does not mean that the parties no longer have the right to take the facts seriously. If mediation is unsuccessful and the case moves to arbitration or litigation, the parties no longer waive or diminish substantive rights. At this point, due to the inherent "adversarial nature" of arbitration or litigation, and the parties' subjective intention to no longer "compromise", the parties can naturally dispute the facts of the case.

Self-admission means that one party admits the fact that the other party claims is unfavorable to itself, so that the two parties have consistency rather than antagonism (or controversy) to the fact, which constitutes a fact that is exempt from proof, and there is no need to allocate the burden of proof in the future. Judging from the existing provisions of the admission system in China, its core effect lies in the effect of exemption from evidence and the irrevocable effect on the party who made the admission, however, the core effect of the admission system in a typical and normative sense lies in its "trial exclusion effect" of binding the court [5].

Therefore, the core of "mediation content shall not be quoted" rule lies that compromise in mediation doesn't constitute a self-admission. Its legal effect is: compromise doesn't constitute conclusive evidence in the subsequent arbitration proceedings or judicial proceedings, and the arbitration tribunal or the judge cannot make a ruling against that party solely based on compromise.

6. Possible future amendments to the Arbitration Law and the Commercial Mediation Ordinance

6.1. There is no need to add the provision of extra-arbitration mediation in the Arbitration Law

Extra-arbitration mediation in the Arbitration Law (Revised Draft for Comment) was not included in the Arbitration Law (2025 Revision), which I once considered a regret. However, with the promulgation of the Commercial Mediation Ordinance, I now see it as a clever move. "Extra-arbitration mediation" cannot precisely define a specific type of mediation; Rather, it generally refers to a type of mediation that "does not fall under arbitration". There is no need to add the provision of extra-arbitration mediation in the Arbitration Law.

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6.2. China may consider adding an arbitration confirmation procedure for commercial mediation agreement in the Arbitration Law and the Commercial Mediation Ordinance

Regarding commercial mediation agreement execution mode, some scholars pointed out: "China's commercial mediation agreement should have direct mandatory execution without resorting to indirect effectiveness transformation mechanism" [6]; but some other scholars pointed out that "It is recommended that legislation adopt a two-step approach" [7]. The direct-mandatory-execution view is forward-looking. But at the current stage, it does raise worries about facing real-world problems.

At present, neither the Arbitration Law nor the Commercial Mediation Ordinance stipulates the arbitration confirmation procedure for commercial mediation agreement. China may consider amending the Arbitration Law and the Commercial Mediation Ordinance to stipulate that.

6.3. China may consider adding the "Mediation content shall not be quoted" rule in the Arbitration Law and the Commercial Mediation Ordinance

Currently, both the Arbitration Law and the Commercial Mediation Ordinance do not stipulate the "Mediation content shall not be quoted" rule. In order to ensure that the parties are not disadvantaged in subsequent civil litigation, arbitration, or other proceedings due to compromises made during the commercial mediation, it may be worth considering establishing the "Mediation content shall not be quoted" rule in the Arbitration Law and the Commercial Mediation Ordinance.

7. Conclusion

The connection between commercial arbitration and mediation in China presents two models: arbitral tribunal mediation and extra-arbitration mediation. The Arbitration Law only provides for arbitral tribunal mediation, and does not stipulate extra-arbitration mediation. Arbitration institutions across the country have attempted to include provisions for extra-arbitration mediation in their arbitration rules. Article 58 of BAC Domestic Arbitration Rules (2025 Revision) provides for independent mediation. Article 49 of the Shanghai Arbitration Commission Arbitration Rules (2025 Revision) stipulates "other mediation and settlement". Article 49 of the Shenzhen Court of International Arbitration Arbitration Rules (2025 Revision) stipulates "settlement, mediation, and negotiation facilitation". These attempts by arbitration institutions have greatly promoted the development of China's commercial mediation system. The commercial mediation organizations established under arbitration commissions have also become an important component of commercial mediation organizations in China. With the promulgation of the Commercial Mediation Ordinance, the connection between commercial arbitration and commercial mediation will inevitably draw attention. The methods for enforcing commercial mediation agreements have already attracted the attention and discussion of Chinese scholars. The "mediation content shall not be quoted" rule has received little academic research so far, but it is extremely important. In future, the above contents could be supplemented and improved through amendments to the Arbitration Law and the Commercial Mediation Ordinance.

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