

JUSTICE

General mediation principles

Mediation is an alternative dispute resolution method providing an adapted solution to numerous disputes between companies and/or private individuals.

In general, parties who choose mediation to resolve a dispute are deciding to negotiate their own solution in the presence of their respective lawyers (if they so decide) and a third-party professional – the mediator – who manages and organizes the entire mediation process.

Mediation is a voluntary process; the parties choose mediation, which they can end at any time. No one forces a party to start or continue the mediation process. Even if suit has been filed, the parties can always be advised on mediation and decide, in full knowledge of the facts, whether or not to take it up.

Mediation can start even if court proceedings have already begun. The parties may choose a mediator independently of any court proceedings: this is conventional mediation. If

proceedings have already started, the court may appoint a mediator (judicial mediation), while the parties may also nominate a mediator.

Facilitating role

A mediator is an independent, impartial and neutral third party. He is a professionally-qualified mediator who must follow on-going training. He is independent as there must be no conflict of interest with any party to a dispute. He is impartial as he cannot take either party's side. Neutrality means the lack of any financial, professional or personal interest in the outcome of mediation. A mediator is neither a judge nor an arbitrator and does not unilaterally impose a decision on the parties. It is the parties themselves who agree a solution they consider appropriate. The mediator guides the parties through the mediation, acts as a catalyst and continuously facilitates negotiations to enable the parties to arrive at the optimum solution. If they so wish, the parties may then

contract a compromise – that may be officially approved – and put an end to their dispute. Mediation presupposes that those empowered to negotiate the subjects concerned are present throughout the mediation process. In disputes between companies, the mediator therefore checks the identities of representatives and any limit to their powers. Finally, mediation is a private and confidential process: all discussions are secret and may not be disclosed to third parties or used subsequently in any proceedings if agreement is not reached. All of these general mediation principles have equal importance and form the basis of professional mediation. They deserve a more detailed analysis, which will be given in future articles. In all cases, the mediator explains these principles to the parties in detail prior to professional mediation and they are included, as appropriate, in the Mediation Agreement signed by them before mediation begins.

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