

Mediating business disputes

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Given the complex web that binds businesses across various stakeholders in the supply and manufacturing chain, disagreements and disputes often impede smooth functioning. Businesses try to maintain the inter-relationship despite disagreements by way of addressing them through various standard practices. One such mechanism to resolve disagreements and disputes amicably is Alternative dispute resolution (ADR).

The mediation procedure of ADR is an appropriate method of resolving disputes. The main issue of mediation is determining damages. All parties in mediation agree to resolve the issue with mutually agreed compensation for damages without any legal proceedings in the court of law.

Bangladesh has no law for mediation although many developed and developing countries have such laws. We have the long tradition of Shalish for many types of disputes in rural societies. It has social and inner community methods of enforceability without any legal bindings.

Since Bangladesh has no mediation law but has a long tradition of Shalish, there may be a consensus on certain rules and regulations based on local and global rules and practices. There are some global standard procedures and convention of mediation usually agreed upon by national and international businesses. It has some general principles such as: (1) the process is non-binding. Unless the parties otherwise agree, the Mediators shall have no authority to issue an enforceable award or judgment; (2) the Mediators shall be neutral and impartial; (3) the process shall be conducted expeditiously. Each party representative will make every effort to be available for meetings; (4) parties agree the terms of mediation in their business contract; (5) if the respondent party has not previously agreed to mediation through a contract or other agreements, it will agree to certain terms after any dispute arises.

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The standard terms of mediation in agreement before any business deal or agreed upon after any dispute occurs are on Mediator and place of mediation etc. All the parties will nominate the Mediator and disclose their identities to other parties for their acceptance. The acceptance of Mediators shall be mutual and unanimous. A party may challenge a Mediator candidate if it knows of any circumstances giving rise to reasonable doubt regarding the candidate's impartiality.

Before appointment, the Mediators will assure the parties of their availability to conduct the proceedings expeditiously. Upon retention of the mediators, the parties shall enter into an engagement agreement for mediation.

At the initial stage the Mediators will sit to discuss the rules and processes among themselves and agree on certain issues to follow during mediation. Each party will submit to the Mediators a written statement summarising the background and present status of the dispute. The parties may agree to submit jointly certain records and other materials. The Mediators may request any party to provide clarification and additional information. The parties may also exchange documents among themselves and also submit joint statement of facts and figures to the Mediators.

In certain cases, upon agreement between/among parties, the Mediators shall keep confidential any written material or information that is submitted. At the conclusion of the mediation process, upon request of a party, the Mediators shall return to that party all written materials and information which that party had provided to the Mediators without retaining copies, or else certify destruction of such materials.

After the initial hearing from the disputing parties and going through the documents and papers, the mediators will initiate and facilitate the negotiation for a mutually agreed settlement in a manner the mediators deem appropriate. The Mediators shall help the parties to explore alternative resolutions for mutually agreed settlement of the dispute.

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Mediators may seek opinion from the parties to determine matters such as preferred subject matter expertise, time constraints, potential conflicts of interest and geographic location at the initial stage of mediation. There are many standard rules of mediation usually agreed upon by the parties and the Mediators. The Chinese mediation rules are very comprehensive. Some of the rules developed by the Chinese are: (1) The Mediators shall control the procedural aspects of the mediation, and the parties shall cooperate fully with the mediators; (2) the Mediators are free to meet and communicate separately with each party, at the Mediators' discretion or at the request of a party; (3) the Mediators shall decide when and where to hold joint meetings with the parties and when to hold separate meetings; (4) if any party needs any document or information in possession of another party, or any other information that may facilitate a settlement, the parties shall attempt to agree to the terms for the voluntary provision of such information, and if they fail to agree, either party may request a joint consultation with the mediators, who will assist the parties in reaching the agreement; (7) each party must be represented at each mediation conference by a business executive authorised to negotiate a complete resolution of the entire dispute, unless excused by the Mediators as to a particular conference (each party may also be represented by a business or legal consultant); (8) the Mediators may obtain independent expert opinion and assistance, with the prior agreement of and at the expense of the parties.

Even if settlement of all claims and issues is not possible, the Mediators may help narrow down the issues and claims in the investigation and discuss with the parties the possibility of their agreeing to arbitration.

Mediation is a risk-free, inexpensive, confidential and quick mechanism to reconcile disagreements and disputes. Business community in Bangladesh may find mediation a helpful tool in resolving disputes.

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