



Mediation

The mediator is a facilitator for the Parties in this dispute procedure. The mediator helps the parties to keep momentum in their dialogue and to get insight into their real needs and interests and encourages the Parties to create and negotiate their own resolution of the dispute.

Mediation differs from Court-based dispute resolution, which leads to a trial in which the disagreement between the parties is decided by a judge (or judges). The procedure of the trial must follow the appropriate procedural law, and the judgment must be made in accordance with the substantive law in force. Inevitably, every case has one or more winners and one or more losers on each side. The judgment is the result of a long process, sometimes over several years, and often very costly. Furthermore, it cannot be denied that any judgment contain an element of lottery.

In mediation almost everything is different. The parties appoint a neutral and independent mediator (in so-called co-mediation two or more mediators) to assist the parties in finding a solution acceptable for both parties. The process is flexible and may be adjusted to the need of the parties. Every issue may be brought up and discussed, for instance future business terms – which is unthinkable in a court dispute. The parties are in full control of the outcome, in the sense that a solution in the form of an agreement can only be obtained with both (or all) parties' approval. In that way the parties are guaranteed that mediation can never result in an unacceptable solution – very different from a court outcome.

Mediation is confidential and without prejudice as long as no agreement has been obtained, which allows the parties to discuss any option without the risk that this may be used in court in the event that the matter is not settled and has to be resolved in court.

The mediation process is generally conducted by way of meetings between the parties and the mediator, sometimes in joint meetings and sometimes in separate meetings (caucus) between each party and the mediator. The parties' lawyers will usually but not necessarily attend the mediation. The process can commonly be dealt with in one day.

Almost all commercial disputes may be solved through mediation, and in practice a solution through mediation in form of an agreement is obtained in 70% - 80% of all the disputes. By using mediation in dispute resolution the commercial industry may save substantial resources, both financial and otherwise. This fact is well documented by several surveys in different countries. In 2008 the recognized research institute Epinion carried out a survey concerning the potential savings by using mediation. The research and analysis is included in the attached report. The report is in Danish.

In telephone mediation the entire process is carried out in telephone negotiations. Telephone mediation is a very efficient and cost saving dispute resolution method especially in Commercial Disputes where the Parties are interested in having disputes solved quickly.