

Kuwait: Mediation as a method of Dispute Resolution

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The advantages of alternative dispute resolution are that it is less costly and it is more business oriented in terms of its quick procedures. However, the disadvantage of alternative dispute resolution is that generally it results in a settlement agreement or solution rather than the right result which would be awarded by the courts in litigation, especially when using mediation as a dispute resolution mechanism.

Mediation is a method of resolving deadlocks and disputes which may arise during the normal course of business in a joint venture company. It is typically the first step in dispute resolution and is normally followed by arbitration as a final step in the event mediation was not productive. Basically, mediation is used to settle the divergence between disputing partners which may lead to litigation if an arbitration clause was not provided for in the joint venture agreement.

In mediation, each partner is responsible for the resolution of the deadlock. Normally, after the partners select the mediator, he starts with conducting separate meetings with the partners to understand the facts of their disagreement and get the relevant data and documentation in order to understand the disputed issues. Then a meeting is held with the partners to present the facts, issues, potential solutions and possibilities after which he starts to negotiate the resolution with the partners until they mutually agree on a certain settlement. It should be noted that a good mediator should examine and focus on the partners' interests and on their financial and business role in the joint venture and finally outline a settlement agreement that includes the agreed resolution among the partners. Thus, a mediator does not have any authority over the partners, which means if they could not agree on a certain settlement, he cannot impose any orders on them.

Partners should be aware of the mediator's role when they include mediation as a deadlock resolution mechanism in their joint venture agreements, as they will be obligated to appoint a mediator in the event of a deadlock occurrence. Firstly, a mediator should be a well experienced person who has a good knowledge and not necessarily an expert of the related business of the joint venture and he should have legal and financial expertise. Secondly, regarding his role, a mediator should a) hold discussions with the partners (whether separately or jointly), b) require relevant documents or data that would help in framing and discovering the facts of the deadlock c) assist the partners with their relationship by reducing any hostility between them, d) study and analyze the facts, e) discuss with each partner the perspective of the other opposing partner, f) propose solutions to the partners, g) reach an agreed resolution with the partners and h) prepare the settlement agreement and arrange for its execution.

The procedures of [selecting the mediator](#) should be included in the joint venture agreement and should specify fast procedures in order to serve the needs of the partners. The selection of the mediator should be done by all the partners and the fees of the mediator should be shared equally by the partners unless otherwise specified by the agreement.