

Advantages / Benefits of Mediations in connection with an Amicable Settlement (FIDIC) or Conciliation (EU/EDF) against Arbitrations.

The writer of the article has carried out Mediation (Alternative Dispute resolution ADR, similar Conciliation).

Basic approach

1 _ **Pre-conditions of the Mediation** have been met: (i) both parties were ready and willing to participate, (ii) each party brought along legal representatives and (iii) legally aged / competent / authorized decision makers,

2 _ **a guided interactive process** resolved the conflicts

Discrepancies of **needs, rights, and interests** have been settled by a guided process in a satisfactory manner and within one month only and and

3 _ a review and ratification / endorsement safeguarded the decision to **become final and conclusive**

Note: The Mediator is not allowed to divulge any data (duty to keep confidential) about the disputing Parties, the Project, the Investment and the content of the satisfactorily achieved results – **without prejudice privilege**-.

Advantages / Benefits of Mediations

A _ Confidentiality: Procedure is not in the public.

B _ Control over resolution procedure:

Parties have control over the resolution procedure; in court the parties "obtain a decision" with unpredictable outcome

C _ Cost saving due time savings:

The Mediator may charge a fee comparable like an attorney, but the mediation process takes generally less time than moving the case through the legal channels. Mediation can be achieved - with proper preparations - within days and hours – if the phases of mediations are considered! D _

Mutuality:

Both parties attain together the mutually agree [personal autonomy / freedom of contract between the parties]. The parties have not to deploy an attorney to force compliance with the agreement. The Agreement is fully enforceable in a court

E _ "Without-prejudice privilege" helps to discuss openly the approach of each party

F _ **Self-Determination ("Eigenverantwortlichkeit") / Responsiveness**

The Self-determination and responsiveness of the parties outside the strict legal rules of the legal system expedites the resolution for the satisfaction of both parties – without outside influence and confidentiality - .

G _ Renew Relationships

The Mediation provides the opportunity to renew relationships to make a positive change for future cooperation.

H _ No legal advisor as a Mediator is required.

Experts in the construction area support the process that both parties to motivate them to move from their fixed positions to a resolution. We think it is better that three butchers discuss a dispute instead a shoemaker leads the process to reach a settlement between the two butchers.

Do you agree?

Other issues addressed about Technical Secretaries (Arbitration Tribunal support) and Consult Expert (Dispute Avoidance and Adjudication Board) >>> www.GuB21.de/Tutor.pdf

and how disputes are avoided

as otherwise agreed www.GuB21.de/OLAF1.pdf (cover) www.GuB21.de/OLAF.pdf (text)