

Kluwer Mediation Blog

Corporate Mediation is becoming mainstream in Brazil

Andrea Maia (Mediar360 – Dispute Resolution) · Wednesday, September 25th, 2013

After a long wait, Corporate Mediation is slowly becoming recognized as an important settlement tool outside the small circle of current practitioners and enthusiasts, reaching a widespread audience which was unimaginable in Brazil not long ago.

Among other evidence, a regulatory framework for Corporate Mediation is currently being debated at the Brazilian Senate, the traditional [ICDR Annual Arbitration Event](#) has, for the first time, incorporated Mediation in their panels and Willian Ury's "Interested Base Process" has reached the local business newspapers and magazines for the positive role it played in helping the settlement of one of the biggest shareholders' disputes in Brazil's corporate history (Casino's acquisition of Pao de Açucar, one of the largest supermarket chains in Brazil – more about that in next month's post).

In this positive environment, the [International Bar Association Mediation Committee](#) organized a Regional Meeting in São Paulo. The event was a great success, attracting not only Mediators, but also senior partners of leading Brazilians law firms, young lawyers, as well as distinguished professors from several universities.

By mixing academic and non-academic mediation aspects, the event turned out to be an enriching experience to all participants. Among others, some of topics covered were: Goals and Formats; Challenges and Advantages; Myths and Truths; Important Mediation Skills; and Scenarios and Perspectives in Brazil.

By challenging participants to engage in a number of different discussions, it was possible to access the audience's overall level of understanding and opinions in relation to the current status of corporate mediation in Brazil. As a result, we could clearly notice a preference towards more practical topics such as:

Myths and Truths: "There is no more space for Negotiation – it is time to fight" (Myth) – it is common for the parts involved in a dispute to come to the conclusion that they have already thought of everything that could be possible done and tried to solve their problems. However, this is often not entirely true, as mediators can help with some deeper case analysis discussion, inviting the right parties to the negotiation table and presenting new perspectives to the problems and solutions.

Mediators can also clearly summarize the information available and statements made, translating the thoughts of one side to the other in such a way that each participant can listen to each other, sometimes providing an entirely new perspective to the parts involved.

Overall, the difficulties involving the client's real understanding of the litigation pros and cons was a recurrent topic throughout the event.

Mediators' skills: All participants agreed that, in addition to being patient, perseverant and honest, mediators should also be outstanding strategic thinkers and have great interpersonal skills. However, when it comes to styles, the choice between facilitative and evaluative was not a consensus, as different situations certainly require different styles.

Last but not least, **the new role of the Corporate Lawyer** has also attracted a lot of interest, as it became evident the need for a shift from the traditional "Court Approach" to a more conciliating behavior, where selecting the appropriate dispute resolution procedure plays a key role not only to client satisfaction, but also to future career success. Frank Sander's article "Selecting an Appropriate Dispute Resolution Procedure" and the combination of mediation with other dispute resolution methods also provided important elements for the discussion.

In conclusion, Corporate Mediation in Brazil has never attracted so much interest like in the last couple of months. High profile cases, no doubt, play a very important role in generating interest towards the subject, but they are not enough unless complemented by other initiatives (like those from IBA and ICDR) and it is up to us, practitioners, to try to sustain and further develop it into the future.

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This entry was posted on Wednesday, September 25th, 2013 at 3:45 pm and is filed under [ADR](#), [Commercial Mediation](#), [Developing the Field](#), [Dispute Resolution](#), [General](#), [Growth of the Field \(Challenges, New Sectors, etc.\)](#)

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