

Kluwer Mediation Blog

Helping Businesses Doing Business

Andrea Maia (Mediar360 – Dispute Resolution) · Monday, April 28th, 2014

I have heard the title of today's post during CPR's Business Mediation Congress , which took place last week in Brazil. It couldn't be more correct: companies should not be in the litigation business, but in the business of doing business.

With vast participation from different segments of the local business community, two important topics reached the top of the agenda of the Congress:

- 1) How companies can implement and benefit from Mediation and other forms of ADR;
- 2) The current belief that the use of “specialist” Mediators in corporate cases is more effective than the use of “generalists.”

As these two topics are very different from each other and, due to their relevance and importance, both deserve a careful reflection. I decided to focus this post on how companies can benefit from Mediation and other forms of ADR, leaving the second one for next month's post.

First of all, no one can argue that Mediation does seem to offer a wealth of advantages over the courts. Cheap, quick, confidential, and consensual, it can help both sides to amicably reach a mutually-acceptable agreement, with little damage caused to their relationship. Nonetheless, the corporate community still has quite a few doubts and somehow avoids using it. Questions like “Why should I use it?” or “When can I use it?” were some of their recurrent concerns during the Q&A session at the Congress.

In this sense, [CPR's 10-point guideline](#) for creating sustainable systems for corporate conflict management provides some important hints not only to the above points, but also on matters related to the overall benefits related to the application of Mediation in the corporate world.

Leaving aside my Mediator's hat and thinking like an entrepreneur for a moment, there are some of the points of CPR's Guidelines which I consider relevant, and, although important, are usually neglected by in-house counsels and other litigation professionals when deciding how to go about solving corporate disputes. The wider dissemination of these points within the organizations would certainly help those in charge to better understand the overall Mediation and ADR benefits, thus increasing the adoption rate of this practice within their companies:

– **Develop Measurements of Success:**

“Developing effective measurement instruments to benchmark costs and benefits associated with the use of various approaches” has become imperative for companies wishing to become more competitive, as escalating legal costs may have a negative impact on the final price of products and services. The ability to measure costs and the overall benefits of the system are powerful tools to convince the decision makers (directors, shareholders etc...) to adopt and invest in ADR.

– **Provide Effective Feedback Loops:**

“Communicating successes back to the business units and senior executives” works as an effective motivational factor for organizations as a whole, as it can be proven that less managerial time is being used for non-business related activities and disputes are being settled more quickly and effectively.

– **Analyze Portfolio:**

Collaboration between the company’s legal departments and its different business units “should occur in a frequent and systematic manner in order to assess disputes frequency, costs, dispute management options, and current cases to determine the most appropriate process for resolving disputes.”

– **Provide Training and Education:**

The benefits of learning and applying the different techniques available for conflict resolution may improve the overall communication processes within the organization, as well as the workforce skills and abilities to deal not only with conflict resolution, but also with other processes that require negotiation and “intensive” interpersonal relationships.

Finally, engaging in a systematic, sustainable, and collaborative approach to dispute management and resolution is an effective way in helping to control some of the legal risks of the business, to create value, and to reach favorable outcomes to disputes in a more creative and cost effective manner.

“Control your own destiny; otherwise someone will.” – Jack Welch (former CEO of GE a signatory of CPR’s pledge)

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