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Setting the Stage for Dispute Resolution Innovations

Andrea Maia (Mediar360 – Dispute Resolution) · Tuesday, February 23rd, 2016

One of the most interesting developments in business dispute resolution over the last decade is the way in which different methods of resolution are being harmonized. The EU Directive on Mediation is one example of this phenomenon, as well as several comprehensive early case assessment and conflict management programs rolled out by multinationals across their geographic reaches.

In reviewing these developments, one cannot help but be struck by evolving trends. First “alternative dispute resolution” or ADR is no longer “alternative” but is rather the norm in many countries, as several studies and surveys show that mediation is a favored dispute resolution mechanism to be applied primarily to any other. Among the main motivations for that are the often-expressed need of corporations to maintain their business relationships with counterparties as well as to deliver savings to their bottom line results and last, but not least, governments and court systems constraints for diminishing budgets and increasing caseloads. All of these factors militate in favor of the changes being observed globally.

Among others, one of such changes is the increasing tendency of court systems to mandate mediation. Programs in this vein have been launched in countries such as Argentina, Italy, England and, more recently, in Brazil.

Brazil’s case is a rather interesting one, as the country’s current economic scenario almost imposes companies to look for more efficient and effective solutions in order, to say the least, to reduce costs. A recent study, published by Valor Econômico (a leading business newspaper), entitled “[The Costs of Court Litigation to Organizations](#)”, states that the Brazilian Judiciary system has about 100 million cases, of which approximately 76% are from the private sector. If we consider that in 2014 companies spent close R\$ 124.81 billion (approximately US\$ 35.00 billion) in litigation, it is not too difficult to understand why the needs for changes and improvements have become not only urgent, but also acceptable by nearly all the parts involved.

This scenario has turned mediation beforehand and arbitration, on a further step, into a front burner type of topic and the consequences have been very positive. The new mediation law which , combined with the reform of the civil law, is going to lead to swifter resolutions and a consequent savings of legal expense. In addition, even those who are staunchly against mediation ordered by courts, are starting to realize that the very act of sitting across a table from their adversaries often leads to a resolution and, if not, soften the relations, facilitating the possibilities of a favorable outcome in the near future (as myself, a Mediator at Rio de Janeiro’s courts , have witnessed it on

several occasions).

Despite the advancements, there are still a lot of issues to overcome regarding the growth of non-judicial dispute resolutions. Among others, the resistance of more “traditional lawyers” to innovative mechanisms and to mandate the settlement if one of the parties in different jurisdiction refuses to carry out its part of the agreement, are just examples of some of the challenges that must be addressed locally and internationally .

However, there are still a lot of issues to be overcome regarding the growth of non-judicial dispute resolutions new tools. Overcoming lawyers resistance to the innovative mechanisms, need of trained professionals and mandating the settlement if one of the parties in different jurisdiction refuses to carry out its part of the agreement are just some of the challenges that must be addressed locally and internationally .

In an effort to break down the existing barriers and seek global, unified, standards, different groups and organizations like “The Working Group II of the United Nations Commission on International Trade Law”, which is trying to develop a multilateral convention for enforcement of mediation settlements and, in Brazil, “The International Institute for Conflict Prevention and Resolution (CPR)”, together with the Brazilian Center for Mediation and Arbitration (CBMA), which will promote a large scale debate in Brazil through a series of workshops entitled “[Harmonizing Global Approaches](#)” , are, no doubt, playing an important role on the development of Mediation and ADR both globally and locally.

Finally, all these challenges require that arbitrators, mediators, in-house practitioners and academics embrace the discussion so that to enhance their ability to harmonize dispute resolution approaches.

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