

# Kluwer Mediation Blog

## Corporate Recovery, Mediation and Master Chef

Andrea Maia (Mediar360 – Dispute Resolution) · Sunday, April 9th, 2017

Despite my hectic life over the last 12 months, I still find time for one of my favorite hobbies: Cooking. However, I do not think that I have as much time to cook as I would like, watching TV shows like Master Chef also helps me to get some enjoyable moments while trying to clear out my mind when at home. My family, my dog, cycling and cooking, in this order, are my passions outside working hours and, sometimes, I unconsciously mix it all together, as I try my cooking experiments on my son (and even on my dog). These moments are priceless .

Needless to say that, as a workaholic (unfortunately), one day I started wondering how the work of a kitchen Chef is somehow similar to the work of a mediator. Both must be sensible, creative , mix different “ingredients” with harmony and plan well ahead of the actions.

Last week, while watching yet another Master Chef’s chapter, my mind drifted away to one of the seminars where I was a speaker this month, which focused in the use of Mediation on companies under [Judicial Reorganization](#) (similar to Chapter 11 situation). This is a “hot topic” in Brazil right now, as unemployment and company closures are at sky high levels and there are not as many opportunities in Brazil as in some years ago. The country’s appalling economic situation fuels those “in need” to fight even harder for their dreams.

In this universe, from January to November 2016, small companies lead the way in the need of Judicial Reorganization, with 1065 cases, followed by 420 medium size companies and 233 large corporations (including, among others, the Telecom giant, OI). As far as insolvency is concerned, 1718 companies opted directly for it (a rise o 3.9% as compared to the same period in 2015).

We are now confronted with the following scenario: “According to Serasa Experian (a credit checking company), the number of businesses under Chapter 11 situation had risen 51.6% in 2016 (January to November) as compared to the same period in the previous year. Extended economic recession and credit unavailability were identified as the main reasons”.

The seminar in question, conduct by both Luiz Fernando Paiva, a leading Bankruptcy partner at Pinheiro Neto Advogados (Brazil’s leading Law Firm) and Eduardo Seixas , chair of [IBAJUD](#) and managing director at Alvarez and Marsal, was an enriching experience, as over 40 Judicial Administrators, from all over the country, managed to share their thoughts ideas in controlled environment, a mixture of “Academy” and practice

As previously mentioned in my posts, Brazil implemented two new pieces of Mediation Legislation in 2016 but, unfortunately, there were still some doubts on their applicability in

Judicial Reorganization situations. However, in August 2016, CNJ (the National Justice Council) published “[Enunciado 45](#) which clarifies that Mediation can in fact be applied in those cases and amendments in the Judicial Reorganization and Insolvency Law are already being evaluated at the National Congress.

Overall, the main questions that we started asking ourselves at the Seminar were: Does Mediation fits in this Reorganization process ? How can we (Mediators) make a positive difference in this scenario? As a almost general conclusion, most of us agreed that, in account of its nature, Mediation can in fact play a very important role under this chaotic moment, not only by bringing together conflicting parties, cutting conflict’s transaction costs and providing efficiency , but also by helping companies in their recuperation process, maintaining them in their productive capacity, safeguarding jobs and creditors.

However, despite our clear capacity to add value, there are still some barriers on the current Judicial Reorganization and Insolvency legislation that prevents the widespread use of Mediation in these situations. Among others, to include the Mediator role as one of the capacities of the Judicial Administrator (trustee) is one of the main changes that is already being proposed in other to amend the current legislation. It is thoroughly believed that, obviously maintained the necessary legal restrictions that must be present in order to safeguard fraudulent occurrences, the role of Mediation and conciliation can in fact “smooth out” the tension that normally exists in this scenario and also speed up the process (easing the pain of those involved).

Another important consideration that is also in the agenda is to determine which type of conflicts are more appropriated to be dealt through Mediation : Meetings with creditors? Shareholders meetings? Labour-related claims?

In my opinion, mediation has a good fit in almost all of these type of conflicts and as Frank Sander states on his article “Fitting the Forum to the Fuss – a user-friendly guide to selecting an ADR procedure”, when it is not the most appropriate process to use, it can help to find the best path to deal with a dispute.

Finally, as a future “Master Chef” to be (why not dreaming?), but already applying the skills and abilities that Cookers and Mediators have in common, I am now very much engaged (together with my colleagues from IBAJUD ) in finding a way to master the best design system to help recovering these companies under stress. However, differently from “Master Chef”, instead of competing amongst ourselves, we are very much uniting our forces in order to find the best solution for the problem in hand.

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