

THE ROLE OF MEDIATION AS A FORM OF AMICABLE SETTLEMENT PRIOR TO ARBITRAL PROCEEDINGS UNDER BANI ARBITRATION CENTER RULES AND PROCEDURES

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ABSTRACT

In the matter of dispute settlement, there are various forms which can be pursued other than litigation. These methods are generally referred to as alternative dispute resolutions or ADR. Alternative dispute resolutions are typically classified as negotiation, mediation, conciliation and arbitration. This paper in particular will further discuss mediation and the responsibility it possesses as a form of amicable settlement before advancing to arbitral proceedings. Several arguments and insight will be presented based on existing arbitration regulations in order to further evaluate how arbitral proceedings progress as well as the role of mediation as a preexisting condition prior to an arbitration. The research method used in this paper is judicial normative research which will focus on the existing regulations, in particular their validity and enforceability. Furthermore, the statutory approach utilized in this article is applied with a literature review to enhance the discussions further elaborated. The author concludes that an arbitration is the last resort while a mediation, as an alternative dispute resolution, will provide a win-win solution.

Keywords: Arbitration, amicable settlement, alternative dispute resolutions, mediation, validity

1. PREFACE

When a conflict arises between two parties, it is common practice for the matter to be settled through litigation which involves the parties to enforce their rights with the guidance of a judge in court. However, in the matter of dispute settlement, there are various forms which can be pursued other than litigation. These methods are generally referred to as alternative dispute resolutions or ADR. Overall, ADRs support in lessening court caseloads and mitigating animosity among parties whose matters have been resolved by the tribunal [9].

In addition to protecting privacy, ADR provides an opportunity for parties to move on quietly as the procedure is convenient and confidential [10]. As a result of ADR, parties can save significant time and energy, since the process is expeditious and unlikely to waste their time [9]. There are situations in which the method of ADR might be inappropriate and detrimental to the interests of the parties [11]. For instance, insolvency laws vary from country to country, however it is common practice that insolvency is generally considered non arbitrable [19-22]. Regardless of its shortcomings, alternative dispute resolutions have gained popularity in many legal systems [12].

Alternative dispute resolutions are typically classified as negotiation, mediation, conciliation and arbitration. This paper in particular will further discuss mediation and the responsibility it possesses as a form of amicable settlement before advancing to arbitral proceedings.

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Table of Contents The Application Of Ec Law In Arbitration Proceedings

1. Understanding the eBook The Application Of Ec Law In Arbitration Proceedings
 - The Rise of Digital Reading The Application Of Ec Law In Arbitration Proceedings
 - Advantages of eBooks Over Traditional Books
2. Identifying The Application Of Ec Law In Arbitration Proceedings
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an The Application Of Ec Law In Arbitration Proceedings
 - User-Friendly Interface
4. Exploring eBook Recommendations from The Application Of Ec Law In Arbitration Proceedings
 - Personalized Recommendations
 - The Application Of Ec Law In Arbitration Proceedings User Reviews and Ratings
 - The Application Of Ec Law In Arbitration Proceedings and Bestseller Lists

5. Accessing The Application Of Ec Law In Arbitration Proceedings Free and Paid eBooks
 - The Application Of Ec Law In Arbitration Proceedings Public Domain eBooks
 - The Application Of Ec Law In Arbitration Proceedings eBook Subscription Services
 - The Application Of Ec Law In Arbitration Proceedings Budget-Friendly Options
6. Navigating The Application Of Ec Law In Arbitration Proceedings eBook Formats
 - ePub, PDF, MOBI, and More
 - The Application Of Ec Law In Arbitration Proceedings Compatibility with Devices
 - The Application Of Ec Law In Arbitration Proceedings Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of The Application Of Ec Law In Arbitration Proceedings
 - Highlighting and Note-Taking The Application Of Ec Law In Arbitration Proceedings
 - Interactive Elements The Application Of Ec Law In Arbitration Proceedings
8. Staying Engaged with The Application Of Ec Law In Arbitration Proceedings
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers The Application Of Ec Law In Arbitration Proceedings
9. Balancing eBooks and Physical Books The Application Of Ec Law In Arbitration Proceedings
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection The Application Of Ec Law In Arbitration Proceedings
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine The Application Of Ec Law In Arbitration Proceedings
 - Setting Reading Goals The Application Of Ec Law In Arbitration Proceedings
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of The Application Of Ec Law In Arbitration Proceedings
 - Fact-Checking eBook Content of The Application Of Ec Law In Arbitration Proceedings
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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