

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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