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ARBITRATION AND MEDIATION IN CORPORATE DISPUTES: EFFECTIVE PRACTICES AND DISPUTE RESOLUTION STRATEGIES

Scientific work is devoted to the study of such ways of resolving corporate disputes through mediation and arbitration. As well as in the course of this research work, effective practices and strategies of dispute resolution were investigated. The authors draw attention to the advantages of each method, as well as the specifics of their application in corporate disputes. The work contains case studies that will help the reader to better understand how to apply effective dispute resolution strategies in their company.

Keywords: *mediation, arbitration, business conflicts, resolution strategies*

With technological evolution, media, societal development and the transformation of economic and competitive aspects, companies are obliged to be more dynamic in managing and resolving their conflicts because it requires a quick and effective response.

In today's society, in the midst of transformations and economic crises, companies are exposed to numerous, increasingly complex disputes, which makes it more frequent to search for better solutions, to find methods that can contribute to the preservation and image of the company and avoid economic losses.

Business conflicts without proper management can leave great reflection, delaying the development of the company. Mediation can be an excellent tool in managing these conflicts, as the strategies and techniques used in mediation can provide more effective, confidential agreements, with mutual benefits, saving time and financial resources, preserving autonomy and relationships between the parties.

Mediation – negotiations between the parties with the participation of a mediator to settle the parties' dispute(s) by means of reaching a mutually acceptable agreement [1].

The role of mediation is to resolve conflicts with a third party who is trained in specific knowledge of the issue under discussion, using techniques to restore the communication lost through disagreement and helping the parties involved to formulate a solution to their conflicts.

Specific out-of-court mediation, as an appropriate method of resolving business conflicts, brings business benefits and contributes to the growth and retention of the company and its business relationships.

An arbitration agreement is an agreement by the parties to submit to international arbitration all or certain disputes that have arisen or may arise out of a legal relationship binding the parties [2].

Both arbitration and mediation are forms of alternative dispute resolution methods that have the same purpose, although there are some differences between them. The main difference is that arbitration requires the engagement of a third party who must review the arguments in the case and make a legal decision that is binding on both parties to the dispute, which may also be enforceable in court. In the case of mediation, the process is based on negotiation with the help of a neutral third party, and the parties to the dispute cannot resolve it until all parties reach an agreement.

Fundamental principles of mediation:

Voluntariness. Mediation is a voluntary process based on the parties' desire to reach a fair and just agreement. No party can be forced to participate in mediation. A mediation agreement shall be enforceable on the basis of the principles of voluntariness and good faith of the parties [1].

Confidentiality. This depends on the circumstances of the mediation and the agreement reached by the parties. The mediator shall not disclose the course and outcome of the mediation unless authorized by the parties or required by law [1].

Cooperation and equality of the parties. The parties are equal. None of them has procedural advantages. They are given the same right to express their opinions, to assess the acceptability of the proposals and terms of the agreement. The parties are equal and expect to find a solution that will be beneficial to both of them [1].

Impartiality and independence of the mediator. The mediator shall conduct the mediation process while remaining impartial and fair. If he/she is unable to conduct the process impartially, he/she must terminate the mediation. The quality of the mediation process is enhanced when the parties have confidence in the mediator's impartiality [1].

Rules of conducting mediation [1]:

1. Mediation shall be conducted in accordance with the procedure and on the terms and conditions determined by the parties by agreement with the mediator, as well as the rules of mediation, Rules of Mediator Ethics, taking into account the requirements of this Law and other legislative acts.

2. The mediator shall not have the right to make proposals to the parties on dispute settlement, as well as, unless the parties have agreed otherwise, to act as an arbitrator in a dispute that was or is the subject of mediation.

3. The mediator may interact both with all parties together and with each of them separately. At the same time, the mediator shall not have the right by his/her actions (inaction) to put any of the parties in an advantageous position, as well as to diminish the rights and legitimate interests of one of the parties.

4. The term of mediation may not exceed six months from the date of conclusion of an agreement on application of mediation.

A corporate conflict in an organization may be resolved through such means as negotiation, conciliation, mediation, arbitration and litigation [4].

Five effective strategies for resolving disputes include [5]:

Competition: a strategy that involves defending one's own interests to the detriment of the interlocutor's interests. It means that a person is sure of his rightness and wants to win the dispute single-handedly. The main actions that a person will take in a rivalry are: strict control of the opponent's behavior, pressure and the use of tricks, provocation and manipulation, unwillingness to enter into a constructive dialogue. This method of conflict resolution has more disadvantages than advantages, and will not suit at all if you want to preserve relations with the interlocutor.

Adaptation: the complete opposite of the rivalry strategy, which is characterized by unconditional acceptance of the conflictor's position. A person puts his or her needs and desires on the back burner in order to avoid a conflict situation. Usually people with low self-esteem and those who are not able to defend their position do so. They are characterized by the following actions: agreeing to the demands of the conflicter, lack of claims and flattery. This tactic can be applied in cases when the subject of the conflict is not very important to you and you want to maintain a constructive relationship [5].

Avoidance: a person tries in every possible way to avoid the conflict and postpone an important decision for later. He not only shows no interest in the conflict situation, but also ignores the opponent's position. He can defiantly withdraw, refuse to interact, deny the importance of the conflict, purposely slow down the decision-making process, suppress emotional reactions. This strategy can be useful only in one case, if you do not intend to continue the relationship with your opponent [5].

Compromise: a tactic in which the interests of both parties are partially satisfied. A person tries to balance positions, offer counter options, strives to find a mutually beneficial solution. Such tactics are fair to both participants in the dispute, but are not the ultimate. As a result, it is still necessary to return to the essence of the conflict and find an optimal solution. In this method, it is possible to resort to the help of third parties, for example, to use mediation or arbitration [5].

Cooperation: the subject of the conflict seeks to resolve the situation in a way that fully satisfies his or her needs and those of the opponent. That is, to find a solution that will be beneficial to all. This tactic is characterized by analyzing the subject of the conflict, calculating the resources of the participants in order to find a common benefit, listening attentively to the position of the interlocutor. This strategy has almost only one advantage – it promotes the development of trust and long-term interpersonal relations, the adoption of mutually beneficial solutions. But not all conflicts can fully satisfy the basic desires of each participant, in which case the principle of cooperation will only complicate the situation [5].

Now we would like to consider the advantages of introducing a mediator into negotiations using a real example. Based on the facts of the real case of entrepreneur I.V. Baibus, development director of the construction company Sputnik, the most appropriate agreement on the procedure for dispute resolution was drafted.

An entrepreneur's dispute arose out of a freight forwarding contract. Exclusive goods ordered from an Italian family factory in the amount of three lorries and with a total value of 400,000 euros disappeared in Austria without ever reaching the Russian customer. A freight forwarder (a Russian company) and a chain of carriers (Russian and Belarusian firms) were involved in the transportation of the goods.

"Client" I.V. Baibus was offered a multi-step dispute resolution clause, which provides for an initial attempt by the parties to reach an agreement through negotiation, then an appeal to a mediator and only then an application for arbitration/claim to the International Commercial Arbitration Court [3].

Corporate disputes can be a costly and time-consuming process that can affect a company's reputation and financial performance. Arbitration and mediation are two effective corporate dispute resolution practices and strategies that can help parties close a dispute quickly and efficiently, preserve their relationship and minimize costs. The choice between arbitration and mediation depends on the particular situation, and each method has its own advantages. It is important to choose the appropriate dispute resolution method to achieve the best possible outcome [6].

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