

Summary : The use of mediation to prevent, manage or resolve a dispute involves a paradigm shift. In daily practice, one runs into the today's habit of relying mainly on conventional or traditional procedures that are based on confrontation.

Yet mediation bypasses those procedures' limits and disadvantages, and presents many additional creative and sustainable solutions. Parties to the conflict become partners in the process. Together, they design a customized solution to their dispute.

Advantages of mediation - predictability, anticipation, speed, durability, limited cost among others - are to be compared with its own limits, as mediation is not a panacea. It is a reflection on how best to manage a conflict by allowing the parties to make a selection of solutions and decide, in each case, between mediation and judicial or arbitration proceedings.

It is difficult to get reliable figures on the use of this amicable process in overall conflict resolution, due to the dispersed nature and confidentiality of the mediations.

In commercial matters breaches of contract are a leading indication for mediation in business life; other major mediation motives can be found in broken trade relations, enforcement of exclusivity clauses, non-competition rules, and intellectual property. Additional mediation cases relate to disputes between shareholders, guarantee commitments over liabilities or assets, or partner share redemption.

In all these areas, mediation should develop as mediation clauses are inserted more systematically in corporate statutes, shareholder and other agreements. In the field of relationships between partners and shareholders, mediation clauses are particularly relevant, because prevention and early resolution of conflicts through mediation are part of good corporate governance.

Key words : paradigm shift, plural justice / mediation, conciliation, arbitrage / conflict management, holistic approach / litigation, conflict, dispute / active communication, interest-based negotiation.