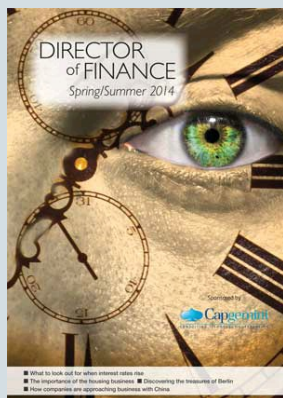


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### Complex international disputes: Spiralling liabilities and legal costs

Details  
Published on Thursday, 10 April 2014 11:55  
Written by Charles Gordon. Charles is a panellist with JAMS International



**"Mediation does not lead to a settlement on the day but instigates a process, with which the mediator can continue to be involved."**

It was reported recently that Arcelor Mittal, the international steel maker, has been in a long running dispute with a group of hedge funds.

The fight is over an alleged breach of contract dating back to Mittal Steel's 26 billion Euro acquisition of Arcelor in 2006.

Not only has the alleged claim spiralled from some 60,000 Euros to 246 million Euros but a pressure group of former Arcelor investors has allegedly now instigated a preliminary criminal investigation in France into the issues raised by the claim.

Arcelor Mittal believes that the allegations made in both the civil and criminal claims/investigations are without merit but the spectacular increase in the size of the potential claim, together with the possible criminal investigation and, presumably, enormous legal costs and management time do raise the obvious question - is there not a better way to resolve complex international disputes?

Since the European Mediation Directive in 2008, it has been possible to obtain court enforceable orders arising from a mediated international settlement which will be binding throughout the EU.

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Although these have been rarely used, they do demonstrate that a settlement arrived at through mediation in an international dispute can lead to an enforceable award equivalent to a court judgment or an arbitration.

Without knowing whether the Arcelor Mittal dispute has been the subject of any form of direct negotiations or alternative dispute resolution procedures, it sounds like the sort of case that cries out for such an approach.

Today, forward thinking mediators do not simply see their role as shuffling between the parties to trade sums of money.

They take a proactive approach to the resolution of disputes and use a range of techniques to bring the parties closer together.

Their starting point is an appreciation that mediation is not solely a tool for immediate settlement at all costs.

Primarily it enables the parties to obtain a much better understanding of the strength and weaknesses not only of their case but also that of the other parties.

Even if an immediate settlement is not arrived at the parties come away with a much clearer understanding of the issues and the appetite and willingness of other parties to reach a settlement.

Frequently, mediation does not lead to a settlement on the day but instigates a process, with which the mediator can continue to be involved, whereby a settlement is achieved as a result of the momentum developed during the mediation process.

Alternative dispute resolution can also involve much more than mediation.

It may involve early neutral evaluation of a case by an independent party, a mini trial, forms of arbitration and much more. A recent mediation with which I was involved, in a case where over a billion dollars was at stake, the parties spent a week in Singapore.

The first two days were, in effect, a mini trial where all the main witnesses and experts were put through their paces. The mediator then held discussions with all parties when he expressed frank views on the strengths and weaknesses, the quality of witnesses and experts and the likely outcome if the case went to a full trial in court.

A settlement was eventually achieved at the end of the fifth day of the mediation, saving the parties literally tens of millions of dollars in costs and probably another 3 years of litigation.

There is no doubt that governments and regulators have a clear focus on ways in which disputes can be settled more cheaply and quickly.

In addition to the 2008 Directive there is a new EU Directive on Alternative Dispute Resolution in relation to consumer contract disputes throughout the EU. There are also many voluntary initiatives within the business community to ensure that an independent ombudsman is available to deal with disputes in their supply chains.

Not every dispute can be resolved by alternative dispute resolution processes but the parties have little to lose and much to gain by at least trying out one or more of the range of procedures which are now available.

*Charles Gordon*  
*JAMS International*  
*Mediator and Arbitrator in the Insurance and Reinsurance Sectors*

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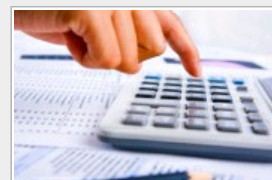


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