

MEDIATION SUSTAINABLE DISPUTE RESOLUTION



THE DANISH
INSTITUTE OF ARBITRATION

A photograph of two men in business suits standing in a modern office hallway. The man on the left is older, with grey hair and glasses, wearing a dark suit and a red tie. The man on the right is younger, with short brown hair, wearing a blue suit and a red tie, with his arms crossed. They are standing in front of large windows that look out onto a city street with buildings and a car. The lighting is bright and professional.

THE DANISH INSTITUTE OF ARBITRATION IS AN EFFICIENT AND PROFESSIONAL PARTNER

When the parties have agreed on a mediation clause that refers to the Danish Institute of Arbitration (DIA), the parties, their legal counsel, the mediators and other professionals can rely on the DIA as an efficient and professional partner which protects and safeguards the mediation proceedings.

Jesper Lett
President of the Danish Institute of Arbitration

Steffen Pihlblad
Secretary General of the Danish Institute of Arbitration

THE DANISH INSTITUTE OF ARBITRATION IS A FIRM BELIEVER IN THE BENEFITS OF ADR AND IN PARTICULAR MEDIATION AS AN EFFICIENT AND SUSTAINABLE FORM OF RESOLVING DISPUTES FOR THE BUSINESS COMMUNITY.

Some business transactions may be relatively straightforward. Some are more complex and extend over longer periods of time. Parties from countries around the globe negotiate and carry out business in diverse cultures, in different political and organisational settings and with different legal traditions. As a result, the potential for conflicts is increasingly high.

No business transaction can predict all contingencies, nor can any negotiation result in a complete understanding and alignment. Those involved in a dispute need earlier and less resource intensive dispute resolution: Mediation should be part of the toolbox.

This brochure explains some of the benefits of choosing mediation at the DIA.

WHAT IS MEDIATION

Mediation is a confidential and voluntary dispute settlement process in which a mediator, independent and impartial of the parties, in a neutral manner helps the parties in a structured process to explore the issues in question, enable communication between the parties and facilitate a negotiated settlement of the dispute.

A mediator does not impose a solution on the parties, but can assist the parties in the exploration of options and the development of creative solutions to a dispute.

The parties may be represented or assisted by legal counsel or advisors of their choice in the mediation process.

Compared to traditional forms of dispute resolution mechanisms, **mediation**:

- allows the parties to have direct influence on the outcome of the dispute
- supports the preservation of the parties' business relationships
- is effective when it comes to internal and external costs and time

SELECTION OF THE MEDIATOR

It is essential that the parties have confidence in the mediator that is appointed in the case

The DIA has a comprehensive international network and is able to attract highly recognized mediators.

Under the 2015 Mediation Rules of the DIA, the parties will always be invited to jointly appoint the mediator. The DIA can also assist the parties in proposing a mediator or by providing a list of potential mediators to the parties.

The appointment of the mediator will be confirmed by the DIA having respect to the fact that the mediator must be independent and impartial.

If the parties are of different nationalities and domiciled in different countries, the mediator shall be of a nationality and be domiciled in a country other than those of the parties, if either of the parties request so.



THE MEDIATION PROCESS

After the mediator is appointed, the mediator and the parties jointly discuss and agree on how the mediation shall proceed. The mediator is responsible for the mediation process and the parties for the content and result of the mediation.

The mediation can be tailored to fit the needs of the parties.

A mediation can follow a model like this:

This model is an illustration and is not necessarily used in all mediations or by all mediators.

STEP 1 – INTRODUCTIONS AND SETTING THE FRAMEWORK.

An outline of the process is agreed on and any preliminary questions or issues may be addressed. This helps to balance the expectations of the parties.

STEP 2 – STATEMENTS AND SUMMARIES

Each party briefly clarifies their positions ("side of the story").

STEP 3 – AGENDA AND EXPLORATION

The parties jointly draw up a list of important topics. These topics are then discussed and communicated which gives each party an opportunity to be heard in the case.

STEP 4 – PRIVATE MEETINGS (THE SO-CALLED CAUCUS)

Are possible at any point in time if a party wishes to have a brief and confidential conversation with the mediator or vice versa, if the mediator deems this necessary to clarify or facilitate the communication between the parties.

STEP 5 – SETTLEMENT

The parties can jointly draw up a list of possible options for action and thereby together work out how they might see a reasonable settlement of the dispute.

STEP 6 – SETTLEMENT AGREEMENT AND COMPLETION

The parties enter into a settlement agreement. After the settlement agreement is drafted, approved and signed by the parties, the mediation is completed.

REASONS TO MEDIATE AT THE DANISH INSTITUTE OF ARBITRATION

The DIA is a non-profit, private foundation which was founded in 1981. The DIA is the only one stop centre for alternative dispute resolution in Denmark.

The DIA offers a wide variety of tools for effective resolution of commercial disputes ranging from proposals of experts, dispute boards, mediation and arbitration.

The DIA is an experienced provider of ADR and a qualified team will monitor all steps in the mediation to ensure an efficient and fair process.

The DIA will monitor the costs of the case; including the fee of the mediator.

If the mediation is not successful, the registration fee and any administration charge paid will be credited in a following arbitration under the Rules of Arbitration Procedure of the DIA.

A settlement reached through mediation can be converted into an arbitral award on agreed terms which can be enforced world wide.

The DIA is located in the heart of Copenhagen. On its premises, the DIA offers excellent meeting facilities for conducting a mediation in a friendly and neutral atmosphere. The meeting facilities are offered free of charge in any case filed at the DIA.



DRAFTING MEDIATION CLAUSES FOR THE DANISH INSTITUTE OF ARBITRATION

In cases where the parties agree to mediate disputes, the DIA recommends the following standard clause to be included in the contract:

”Any dispute arising out of or in connection with this contract, including any disputes regarding the existence, validity or termination thereof, shall be settled by mediation administrated by The Danish Institute of Arbitration in accordance with the rules on mediation adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

If the mediation proceedings are terminated without a settlement, the dispute shall be settled by arbitration administrated by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.”

On www.danisharbitration.dk a variety of model clauses can be found to suit the parties' wishes.

COPENHAGEN – A NATURAL CHOICE FOR A MEDIATION

The capital city of Copenhagen is a beautiful historic city. The city runs smoothly and with Denmark consistently ranked as one of the least corrupt countries in the world; bribery and corruption are virtually non-existent.

Copenhagen is a business, financial and commercial hub of the Nordic Countries and the Øresund Region. Many international businesses flourish and thrive in Copenhagen. The city is internationally minded and provides for a setting where parties from all over the world can feel safe to mediate their disputes.

Copenhagen is one of the safest cities in the world and is highly ranked for livability. The population is about 1.3 million.

Copenhagen is accessible on direct flights from more than 140 locations. All European mainland airports can be reached within 3.5 hours, while Europe's major cities are less than two hours away.

Copenhagen Airport – www.cph.dk – is the largest and busiest international airport in Scandinavia. In addition, Copenhagen Airport regularly wins international awards for Best Airport, thanks to its efficiency and punctuality, as well as for the design of its terminals, range of quality shops and overall customer satisfaction.

Copenhagen Airport is only a 14 minute metro ride from the city centre, which is the shortest travel time from an airport to any capital city centre in Europe.

Copenhagen is a city of cultural and culinary distinction, offering restaurants within all price ranges and tastes and is currently home to some of the best restaurants in the world.



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