

Mediation: Addressing Your Frequently **Raised** Queries



ARBITRATION

• Why Try It ?

The judicial order, or simply justice, courts, litigants, lawyers, etc., is essential to the proper functioning of any society. Nowadays, this order opens up new perspectives. Prospects are motivated by the lengthening of the ordinary legal procedures, the congestion of the courts; two reasons which have as a consequence the deterioration of the quality of the rendered judgments.

Indeed, we live in societies that rely on a logic of recourse to the courts and the law to settle any conflict. A preference for an imposed solution, without seeking a concerted one, remains the most favorable option for the litigants.

Recourse to mediation seems to be one of the only ways to escape from a stifling formalism and create a continuous dynamic in the conflicts, making them capable of being overcome.

Indeed, every conflict is singular, but the law does not give any importance to this singularity. And the codified legal texts constitute a formal language that avoids the emotional, moral, personal and subjective components of the conflict.

To think therefore of mediation as a serious alternative implies an organization of the informal character of any conflict, as well as a quest for balance between autonomy and authority.

In the light of all these observations, here is the usefulness of recourse to mediation, far from its only efficiency in terms of cost and speed:

- Concerning the autonomy conferred on the parties, this is quite broad in scope, giving them:
 - The opportunity to choose mediation as a preliminary or alternative to the state court or arbitral tribunal,
 - The possibility to stop the mediation process at any time, the latter being only an obligation of means,
 - The freedom, allowing them to free themselves from any rule of law and to go directly to the cause of the conflict and a probable solution,
 - The monopoly on the management of the conflict itself; because it is according to the needs and interests of the parties that the process works in order to reach an agreement.
- Concerning the degree of formalism of the procedure; recourse to the court seems to be the most formal procedure, whereas mediation, which favors communication negotiation and amicable agreement seems to be the least formal procedure.
- Concerning the depth of the resolution; the rationality and objectivity that the court tries to consider is due to the fact that the examination is simply limited to the conflict. Mediation, on the other hand, in its quest for an amicable

compromise acceptable to the parties, tends rather to plunge into the depths of the conflict in order to unravel its threads, which are not limited solely to the legal facts.

- Concerning the consequences on both parties; the final judgment is most often win/lose for both parties, or even a lose/lose: even if one party succeeds in obtaining a solution that is highly favorable to it, however the time and costs that it has to bear remain important.

If the recourse to mediation can also lead to a result more or less unsatisfactory for one of the two parties; the fact remains that:

- This process is faster, cheaper, simpler and the result, even if unfavorable, will be beneficial.
- The final agreement being a solution accepted by both parties, each of them will find this agreement more satisfying than a judgment or an award.

- Regarding the maintenance of relations after the end of a mediation; it should be noted that the fact of trying to overcome a conflict through negotiation and communication allows the construction of an agreement and a solution with lasting effect.

Indeed, understanding the reasons which led to a disagreement will allow the

apprehension of the latter: consequence: build rather than destroy.

- Regarding the return to a state or arbitral jurisdiction; once the mediation process has begun, it is not certain that it will succeed. It remains very likely that the parties to a dispute will not be able to reach an amicable agreement. The judicial way will then be the way to decide.

• Difference Between Mediation and Arbitration

Arbitration and mediation are both part of an alternative justice.

But alternative to what?

Alternative to a state justice known for its slowness, its cost, its complexity and its lack of predictability.

Which definitions?

Arbitration is a private justice:

- Justice because it consists in settling a dispute by the pronouncement of an award whose legal value is similar to that of a judgment.
- Private because the award is made by a third party chosen by the parties and entrusted with a jurisdictional mission.

Mediation – belonging to the family of amicable dispute resolution methods – consists of a process whose aim is to attempt to resolve the

dispute amicably, through the intervention of an independent and neutral third party ; whose role is limited to organizing the negotiations without the possibility of advising or imposing a lasting solution.

What about the advantages?

If mediation and arbitration share well-known advantages such as confidentiality, flexibility, autonomy of will and speed, the fact remains that arbitration ends with the pronouncement of an award imposed on the parties, whereas the purpose of a mediation is a "win-win situation".

- The cost and the heaviness of the procedure in arbitration are crowned by the legal security conferred to the parties.
- The contractual character of the mediation agreement, resulting from a negotiation process, allows the renewal of social links.

Which regimes?

Arbitration is marked by a well-known procedural regime and shaped by the active participation of the parties according to their needs. Mediation, on the other hand, does not follow any pre-established binding procedural rules - rather, it proceeds according to a logic of "phases".

The guiding principles of the trial (notably the adversarial process), applicable to the arbitration procedure, are not imposed in mediation, which escapes the dialectic of the trial.

What means?

In order to organize the peaceful resolution of the conflict, the mediator seeks to understand the origin of the "conflict", which is not necessarily legal.

At the same time, the parties may also detach their conflict from the classic procedural channels by directly attacking the substance of the dispute.

Arbitration, on the other hand, does not proceed in this way; the procedural rules being constraining, heavy and burdensome, neither party nor arbitrator can detach themselves from them.

And the final purpose of each?

If the purpose of mediation is to reach an amicable agreement between the parties, the obligation is one of means and not of result - in no case the parties are obliged to continue the mediation process and to find a solution: they only have to implement the application of the mediation clause stipulated previously.

The question of the binding force of the agreement resulting from the process does not even arise, the enforceability will depend firstly on the qualification of the agreement (settlement or not...) and secondly on the applicability of the Singapore Convention (on the enforcement of mediated agreements).

The purpose of arbitration is to reach an award rendered by the arbitrator ruling on the dispute. The award is not directly enforceable because of the private nature of arbitration. However, if the

award is not enforced spontaneously, it may be enforceable by virtue of an exequatur decision.

- **Is Mediation Appropriate for all Kind of Disputes?**

The question that arises is whether the subject matter of the dispute is capable of being settled by mediation or not?

In arbitration, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards refers to the notion of "arbitrability":

- On the one hand, the non-arbitrability of a dispute renders the arbitration agreement invalid;
- On the other hand, recognition and enforcement of an arbitral award may be refused if the court where such recognition and enforcement is sought finds that "the subject matter of the dispute is not capable of settlement by arbitration under the laws of that country".

Is there a mediability requirement in mediation?

Mediation can be useful in all cases where two or more parties disagree on one or more points. It is also possible in all areas where the parties have free disposal of their rights. There may be only one limit to this mediability: mediation is not possible in all matters relating to public policy.

But is it appropriate for all conflicts or all mentalities?

When planning a litigation strategy, each party must assess the risks that may result from a trial and, in parallel, the advantages of an alternative or amicable procedure.

- Mediation will be appropriate from a financial point of view insofar as one of the parties knows that judicially, it would be at risk because its file is not very good. An amicable attempt to limit the risks sounds good in this case. Mediation would also be a good solution if the collective interest is sought rather than the personal interest: finding a solution that allows the continuation of relations in the long term is in the interest of both parties.
- Mediation would be inappropriate and will not lead to an amicable solution if one of the parties is certain to win the case, refusing any negotiation or cooperation.

What areas can mediation cover?

- In civil and commercial matters:

- ✓ In civil matters, mediation can concern everyday disputes such as neighborhood conflicts, difficulties in collecting a debt, disputing an invoice, problems between the owner and the tenant of a building, etc.
- ✓ In commercial matters, mediation is likely to find its place particularly in conflicts between partners within companies, labor relations, construction law, difficult contractual relations, etc.

- In family matters: mediation is an alternative to the courts for the settlement of family conflicts such as break-ups, separations and divorces, inheritance, or conflicts preventing one of the parents from seeing their children. The ultimate goal is to protect the public order of the family.

- In consumer matters: when a dispute arises between a professional and a private individual (in this case a consumer), in the context of the execution of a contract of sale or provision of services, we speak of consumer mediation. This process is an out-of-court, fast and free way for the consumer to solve his disputes related to the purchase of a product or a service, without going through the state justice.

- In administrative matters: When a dispute arises between a citizen and the administration, a mediation process can be initiated in order to find an amicable solution and avoid an appeal to the administrative court. This recourse may be voluntary, but in some countries it has become compulsory in order to avoid court congestion.

- In criminal matters: when certain offences are committed, an amicable solution can be sought between the offender and the victim, thus avoiding a trial. Negotiation between the two parties leads to the perpetrator taking responsibility for his actions in order to repair the damage without going to trial.

It's important to note that not all criminal matters can be resolved through mediation, and that some offenses, such as violent crimes, are not typically eligible for this type of dispute resolution. The specific types of criminal matters

that can be resolved through mediation can vary depending on the jurisdiction and mainly concerns offences of low gravity.

- In social matters: Social mediation is a process of creating and repairing social links and settling everyday conflicts, in which an impartial and independent third party tries, through the organization of exchanges between people or institutions, to help them improve a relationship or settle a conflict between them.

• When Should Mediation Happen?

Mediation can serve two purposes: the prevention of disputes or their resolution. It can therefore take place even before a dispute arises, but also after it has arisen.

What role in prevention?

The term "preventing a dispute", in the broadest sense of the term, refers to the fact of preventing the appearance, aggravation or extension of a dispute.

Legally speaking, the term "anticipation" is used instead. It is therefore a matter of:

- Anticipating the very appearance of the conflict; this is done upstream, by implementing all possible means to avoid this occurrence.
- However, if the occurrence of the conflict cannot be totally avoided, anticipation in this case is a matter of reducing the likelihood of its occurrence and minimizing the consequences.

In this situation, a conflict that does not yet exist is envisaged.

Anticipating through mediation is an option that should not be neglected by the parties. It is therefore a tool, a means made available to them, allowing them to identify at an advanced stage the signs of tension and conflict, with a major goal which is to avoid or reduce the risks of litigation.

If it allows the dispute to be avoided, it is called "preventive mediation". If the occurrence of the dispute is unavoidable, we speak of "mediation to accompany the conflict", which will make it possible to define the contours of the latter while allowing the avoidance of a probable increase in its consequences.

Mediation will then allow:

- The parties to initiate dialogue before the conflict arises,
- To take into account the human relations which constitute an essential dimension,
- A different resolution of conflicts that often seem to be inseparable from personal relationships, especially in families and small businesses.

What role in dispute resolution?

Reducing the role of mediation to the sole prevention of conflicts, so as to avoid their occurrence, is a reductionist view. As an alternative to state and arbitration justice, it aims to put an end to any conflict, but in an amicable way.

The ideal would be to arrive at a society where the avoidance of conflict predominates over its occurrence. But in the latter case, mediation also has its role to play in integrating a culture of appeasement, negotiation and dialogue within societies that prefer the culture of "clashes".

Thinking of resorting to mediation to settle a conflict will open the door to a multitude of solutions, all thought out by the parties, converging in their respective interests, allowing the renewal of relations rather than their destruction.

Thinking about the occurrence of mediation can be done before the dispute arises.

In this case, the parties are invited to contractualise the settlement of their dispute which may arise in the future. This contractualisation creates a kind of horizontality in social relations and is especially evident in the business context where the parties to a contract insert mediation clauses called 'dispute resolution clauses'.

As for the interest in thinking about using mediation upstream, this is explained in particular by:

- The common will to quickly set up the process aiming at putting an end to the probable dispute.
- The will to create procedural effects, not only contractual effects – the mediation clause prohibiting in the majority of legal systems the recourse to the judge before the implementation of the mediation process.

Mediation can also be considered once the dispute has arisen.

In this case, either the dispute has not yet reached the court, or a judicial/arbitration procedure has already been initiated - in this case, recourse to mediation is made by an express request from the judge or the parties.

- Thus, it can be the first step in finding a solution after negotiations between the parties alone have failed. The role of the neutral and impartial third party in managing the discussions can be of great importance. In this case, the main objective is to prevent the conflict from escalating into a court case.
- It can also intervene at any stage of a judicial or arbitral proceeding, at the request of the parties who wish to interrupt them to explore the possibilities of an amicable settlement.
 - Two examples:
 - Once the arbitration procedure has been initiated, recourse to mediation remains possible at the request of the parties; a large number of arbitration centers setting up hybrid procedures called Arb-Med.
 - During a court proceeding, if the parties find that the scope of the dispute is not well-defined, or that the restoration of their relationship is likely to clear up their dispute, recourse to mediation is a possibility.

- Finally, the recourse to mediation can take place just after the referral to a judge. In this case, the latter orders a judicial mediation. And in the case where the conflict persists and that an agreement is unlikely to be reached, the judge will take up the case again in order to decide and render a judgment.

What role does the mediator play during the process?

A mediator plays a neutral and impartial role in a mediation process. Their role is to facilitate communication and negotiation between two or more disputing parties and help them reach a mutually acceptable agreement.

The goal of the mediator is to help the parties resolve their dispute in a fair, efficient, and amicable manner. The mediator does not have the power to impose a solution but instead guides the parties through the negotiation process to find a resolution that meets their needs and interests.

The role of the mediator is to provide a safe and structured environment for open and honest communication, to assist the parties in identifying their underlying needs and interests, to help them brainstorm potential solutions, and to facilitate the negotiation process. He may suggest options for resolution, provide information to clarify misunderstandings, and help the parties understand each other's needs.

- **Confidentiality as a Principle**

"Confidentiality is a virtue of the loyal, as loyalty is the virtue of faithfulness" - Edwin Louis Cole

Confidentiality is a fundamental principle of mediation. It is intended to encourage open and honest communication between the parties, while also protecting the privacy and sensitive information shared during the process.

What is confidential?

Mediation proceedings and all information (whether given orally, in writing or otherwise) shared during the process are considered confidential. This includes statements, documents, and other communications shared during the mediation, as well as the opinions expressed, or suggestions made by either party or by the mediator during or for the purposes of the Proceedings.

Who is concerned?

The Institute (in the case of an institutional mediation), the parties, their representatives, their advisors, and the mediator shall keep confidential all information produced for, or arising out of or in connection with, the mediation.

Exceptions to confidentiality

There are some exceptions to confidentiality in mediation. For example, the 2008 EU mediation Directive provides that the seal of confidentiality

may be broken: *"when [the mediator is] required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person' or where: 'disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement"*.

It is important to note that the parties may contractually agree on exceptions to the confidentiality of their mediation process. The law applicable to the mediation process may also constrain and impose certain exceptions to the confidentiality principle.

Additionally, in some cases, the parties may agree to waive confidentiality.

Confidentiality in mediation is protected in several ways

Sign a confidentiality agreement: The parties can sign a confidentiality agreement, setting out the terms and conditions of confidentiality, prior to the start of the mediation.

Mediator's obligations: Mediators have a professional obligation to keep the information shared during the mediation process confidential. They are not permitted to disclose any information shared during the mediation without the parties' consent, except in specific circumstances.

Limited distribution of documents: Any documents shared during the mediation

process should be kept confidential and should be distributed only to the parties and the mediator.

N.B. It's important to note that the laws and regulations regarding confidentiality in mediation may vary by jurisdiction. Therefore, it's important to check the laws of your specific jurisdiction to ensure that the confidentiality of the process is protected.

• **Cost of Mediation Services ?**

The cost of mediation services can vary widely depending on a number of factors, including the type of dispute, the location, the experience and reputation of the mediator, and the length of the mediation. Some common factors that influence the cost of mediation include:

- Hourly rate of the mediator: Mediators charge different hourly rates, ranging from several hundred dollars to several thousand dollars per hour.
- Length of the mediation: The longer the mediation, the more it will cost.
- Complexity of the dispute: Disputes that are more complex or involve more parties may be more expensive to mediate.
- Location: Mediation services may be more expensive in major metropolitan areas compared to smaller cities or rural areas.

- Experience and reputation of the mediator: Mediators with more experience and a better reputation may charge higher rates.
- The administrative fee of the mediation center: in the case where the parties opt for institutional mediation to resolve their dispute, an administrative fee as set out in the institutional rules must be paid.

It's worth noting that while the cost of mediation can be substantial, it is often less expensive than litigating or arbitrating a dispute.

• **Commencement of a Mediation**

- **Difference between judicial and conventional mediation**

Judicial mediation and conventional mediation are two distinct forms of mediation with different purposes, processes, and outcomes.

Judicial mediation is a form of alternative dispute resolution (ADR) that takes place in the context of ongoing court proceedings. The mediator is appointed by the court and the parties are usually required to attend the mediation as a pre-condition to proceeding to trial. The goal of judicial mediation is to help the parties reach a settlement, which can then be presented to the court for approval.

Conventional mediation, on the other hand, is a voluntarily initiated process where the parties seek the assistance of a mediator to resolve their dispute outside of the court system. The mediator is typically selected by the parties, and the process is completely confidential. The goal of conventional mediation is to help the parties reach a mutually acceptable agreement that resolves their dispute.

In summary, judicial mediation is court-ordered and focused on settling a legal dispute, while conventional mediation is voluntarily initiated and focused on resolving any type of dispute through mutual agreement.

- **Starting a judicial mediation**

The commencement of a judicial mediation typically occurs within the context of ongoing court proceedings. It may be initiated by a court order, or it may be requested by one or both parties as a means of resolving their dispute before the case goes to trial.

The process usually starts with the court appointing a mediator, who is a neutral third party trained in dispute resolution. The mediator then contacts the parties to schedule a mediation session. In some cases, the judge or even the parties may have the opportunity to select the mediator from a list of qualified individuals.

It is important to note that a judicial mediation is not binding unless the parties reach a written agreement and present it to the court for approval. If the parties are unable to reach an agreement during the mediation session, the court case will proceed to trial.

- **Starting a conventional mediation**

The commencement of a conventional mediation typically occurs when two or more parties voluntarily agree to engage in mediation as a means of resolving their dispute.

An agreement to mediate is a written agreement between the parties to a dispute, in which they agree to participate in a mediation process. It sets out the terms and conditions of the mediation, including the scope of the dispute, the responsibilities of the parties, and the role of the mediator. It can be a clause in a main contract or an independent contract.

The agreement to mediate is important for several reasons:

- Establishes a framework for the mediation process: The agreement to mediate sets out the rules and expectations for the mediation process, providing a clear understanding of the process for all parties involved.

- Ensures mutual commitment: By signing an agreement to mediate, the parties are committing to the process and are more likely to engage in productive discussions and negotiations during the mediation session.

- **How to Draft an Enforceable Mediation Clause in a Contract?**

To draft an enforceable mediation clause, consider the following steps:

Define the scope of the dispute: The first step in drafting a mediation clause is to define the scope of the dispute that will be covered by the clause. This might include specifying the types of disputes that will be subject to mediation, such as contract disputes, employment disputes, or disputes arising from the use of a particular product or service.

Triggering events: The clause should specify when the parties are required to mediate, such as when a dispute arises or when a certain event occurs. For example, the clause could specify that a notice must be sent within a certain timeframe in order to trigger the process.

Choose a mediator: The clause should specify how the mediator will be selected,

such as through agreement of the parties or by appointment from a panel of mediators.

Timing: The clause should specify a time frame for the mediation to occur, such as a specific deadline for the parties to initiate mediation or a requirement that the parties mediate within a certain number of days/sessions after a dispute arises.

Costs: The clause should specify who will be responsible for paying the costs of the mediation, such as the parties themselves or the party that initiated the mediation.

Confidentiality: The clause should specify the extent to which the mediation proceedings and any settlement agreements reached during the mediation will be confidential and protected from disclosure.

Binding nature: The clause should specify whether the mediation will be binding or non-binding. It helps to clarify the expectations and obligations of the parties, increases the likelihood of a successful mediation outcome, and improves the enforceability of the clause itself or any settlement agreement reached.

Alternative dispute resolution: The clause should specify whether the parties will be able to pursue other forms of alternative

dispute resolution, such as arbitration, if mediation is unsuccessful.

Include choice of law provisions: The clause should specify the governing law that will apply to the mediation, as well as the jurisdiction in which any disputes arising from the mediation will be resolved.

• What About the Process?

• Initial meeting

The initial meeting in a mediation process is often referred to as an intake session, orientation session, or pre-mediation session. This meeting typically occurs before the actual mediation process begins, and serves several purposes:

- Introducing the parties: The mediator will introduce themselves to the parties. He will also explain the mediation process and what is expected of the parties.
- Assessing the parties' needs: The mediator will assess the parties' needs, including their goals, interests, and concerns.
- Discussing the ground rules: The mediator will discuss the ground rules for the mediation, including the rules of confidentiality and communication.
- Establishing the agenda: The mediator will work with the parties to establish the agenda for the mediation, including the

topics to be discussed and the desired outcome.

- Explaining the mediator's role: The mediator will explain their role in the mediation, including their responsibilities and limitations.
- Building trust and rapport: The initial meeting provides an opportunity for the mediator to build trust and rapport with the parties, which can help to create a positive and productive environment for the mediation process.
- Provide information on alternative dispute resolution options: The mediator will provide information on alternative dispute resolution options, such as going to court if mediation does not result in an agreement.

• Negotiation

The negotiation process during a mediation is a collaborative and dynamic process that is designed to help the parties find a mutually acceptable solution. The mediator plays an important role in facilitating communication, building rapport, and helping the parties understand each other's perspectives. The goal of the negotiation process is to reach a resolution that is fair and sustainable for all parties involved. The following are the steps involved in the negotiation process during a mediation:

1- Opening statements: The opening statement is an important step in the mediation process as it sets the foundation for the rest of the mediation. The parties make opening statements to explain their perspectives on the dispute and what they hope to achieve through the mediation process.

By establishing a clear and mutual understanding of the process and the parties' perspectives, the mediator can, at the end of the parties' opening statements, encourage open communication to help them identify the issues and clarify the specific problems or conflicts that need to be addressed and resolved.

2- Moving from positions to interests: It's the process of shifting the focus of the negotiation from the parties' stated positions to their underlying needs, wants, and concerns. This shift from positions to interests is often a key factor in successful mediations, as it helps the parties understand each other's perspectives and find mutually acceptable solutions.

Positions refer to the parties' stated demands or requests, such as "I want \$10,000" or "I want full custody of the children." These positions are often

based on the parties' beliefs about what is right, fair, or necessary, and they can be seen as non-negotiable.

Interests, on the other hand, refer to the underlying needs, wants, and concerns that drive the parties' positions. In the continuity of the previous examples, the transition to interest consists in the "will or the need for a financial security" or the "concern for children's safety".

3- Brainstorming and generating options: Brainstorming is often not familiar to all parties.

The parties to any negotiation as well as their representatives tend rather to move directly to the offer and counteroffer rather than suggesting all sorts of possibilities. Here are some reasons why brainstorming and generating options are important in a mediation:

Encourages creativity: Brainstorming encourages the parties to think creatively and to consider a wide range of options for resolving the dispute.

Builds trust: Generating options together and working towards a common goal can help the parties build trust and rapport, which is essential for a successful resolution of the dispute.

Increases understanding: By considering different options, the parties can gain a

deeper understanding of each other's needs, concerns, and interests. This helps to build mutual understanding and respect, which is key to finding a mutually acceptable solution.

Prevents impasse: Brainstorming and generating options helps to prevent the negotiation process from becoming stuck or reaching an impasse. By having multiple options to consider, the parties have more opportunities to reach a resolution.

Supports a win-win outcome: The goal of mediation is to find a mutually acceptable solution to the dispute. Brainstorming and generating options helps the parties to focus on their interests, rather than their positions, and to find a solution that meets the needs and goals of both parties.

- 4- Evaluating and selecting options: In a mediation, the parties choose between the options generated by working together with the mediator to assess the feasibility, practicality, and potential impact of each option. The following steps can be followed:

Evaluate the options: The mediator and parties should assess each option based on its potential impact on all parties, its

feasibility and practicality, and any legal or ethical implications.

Weigh the pros and cons of each option:

The mediator and parties should consider the advantages and disadvantages of each option and weigh them against each other.

Consider the potential for long-term satisfaction: The mediator and parties should choose an option that not only meets the immediate needs of all parties but also has the potential for long-term satisfaction.

Decide: Based on the evaluation and input from all parties, the parties should make a decision on the best option.

- **Private sessions**

A caucus during a mediation process refers to a private meeting between a mediator and one or more of the parties involved in the dispute.

Caucuses are used during a mediation process when the mediator determines that private communication between the parties and the mediator would be beneficial to the resolution of the dispute. Some common situations where a mediator may use a caucus include:

- When a party needs to express a sensitive or confidential issue: Caucuses provide a safe and private environment for parties to express concerns that they may not

feel comfortable sharing in front of other parties.

- To gather information: The mediator can use a caucus to gather information from a party, such as their perspective on the dispute, their needs and interests, or any possible solutions they may have.
- To clarify misunderstandings: The mediator can use a caucus to help clarify misunderstandings between parties and provide guidance on how to move forward.
- To build rapport and trust: The mediator can use a caucus to build rapport with the parties and help establish trust, which is important for the success of the mediation process.

- **Closure of a mediation**

Concluding a mediation involves bringing the mediation process to a close whether through a final, partial or no agreement. The following steps can be taken to conclude a mediation which has resulted in an agreement:

- 1- Confirm resolution of the conflict: The mediator should confirm with the parties that they have reached a mutually agreed upon resolution to their conflict.
- 2- Document the agreement: The parties and the mediator should create a written agreement that outlines the terms and conditions of the agreement reached

during the mediation process, including any commitments made by each party. Then the mediator and the parties should sign the written agreement to formalize it and to demonstrate their commitment to its terms.

- 3- Clarify the terms of the agreement: The mediator should ensure that all parties understand the terms and conditions of the agreement and any actions that are required of each party.
- 4- Review the agreement: The mediator should review the agreement with the parties to make sure that it is complete and accurate and to answer any questions the parties may have. If necessary, the parties may want to have the agreement reviewed by a lawyer to ensure that it meets all legal requirements and that it is enforceable.
- 5- File the agreement with the appropriate court or authority: If necessary, the parties may need to file the agreement with a court or other government authority to make it legally binding. This process can vary depending on the jurisdiction, so before filing the agreement, it's important to check the requirements of the jurisdiction where the agreement will be filed, as well as any local rules or procedures that may apply.