



Mitigating business risks through strategic conflict resolution

By

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Business deals can sometimes go awry, potentially putting an organisation in jeopardy and its reputation and finances at risk. However, these can be circumvented when the appropriate dispute resolution mechanisms and conflict resolution clauses are in place.

Receiving a letter of demand or a writ of summons could severely impact one's psychological well-being. A writ marks the start of court proceedings which, too often, is responded to by a company's engagement of legal help, where discussions to settle are stalled, swords are drawn and financial blood is spilt.

In today's world, what is public is subject to greater scrutiny and spreads faster. Taking a legal battle public is a surefire way of putting a company's reputation up for target practice. A single episode of negative publicity can fritter away all the goodwill and brand equity that a company may have taken decades to build. Such publicity can result in loss of perceived value and impact future business relations.

For instance, Marco Polo Marine's recent scuffle with Sembcorp Marine over the termination of a S\$306-million rig contract caused Sembcorp Marine's shares to plummet to a six-year low, after the legal action was made public.

This is where mediation can play a vital role.

Mediation is a method of resolving disputes that uses a skilled neutral third party – a mediator – to manage the negotiation process confidentially and steer those involved in the dispute towards settlement. Put simply, a mediator helps parties find win-win solutions for all. Fault-finding is parked aside as parties focus on finding solutions that will meet their interests.

Making a Case for Mediation

In some cases, a mere whiff of a public spat can already prove to be damaging to one's reputation. In managing reputational risks, mediation offers a private and confidential environment where parties can engage in closed-door discussions and explore options without generating negative publicity. When a settlement is reached, the details might also be kept confidential.

Because mediation is "without prejudice" (read: discussions and documentation resulting from mediation cannot be used against any party if no settlement is reached), parties can still go on to enforce their rights, which remain intact post-mediation, if an amicable end is not possible.

Mediation reduces financial risks for organisations, helping them lower their legal spending and hence, save costs. In the 2015 *Litigation Trends Annual Survey* commissioned by Norton Rose Fulbright, 14 per cent of survey respondents in Asia reported an annual litigation expenditure (excluding costs of settlement and judgement) of over US\$10m; seven per cent spent between US\$5m and US\$10m; and 64 per cent spent less than US\$500,000.

Mr Kevin Kwek, Director at Legal Solution LLC who was involved in a banking dispute

of S\$5.3m commented, "The matter which was initially fixed for a 13-day trial in the High Court, was resolved by mediation at the Singapore Mediation Centre (SMC). By going through mediation, my client saved at least S\$400,000 in legal and court fees, along with a lot of time and mental stress that is usually associated with trials."

Cost and Effect

Mediation at SMC is kept relatively affordable; the mediation fee for sums in dispute over S\$60,000 starts from S\$963 per party, per day.

SMC has mediated over 2,700 matters, with a 75 per cent success rate. Of the cases that settled, more than 90 per cent were mediated within a day.

In mediation, parties also have control over the proceedings and the outcome. Parties going through an adjudicatory process like litigation or arbitration will always run the risk of the neutral deciding against them. A skilled mediator is trained to guide parties through complex issues and help them leave their entrenched positions and attain solutions that work for both parties. At SMC, parties have a choice of mediators from over 10 specialisations to meet business needs.

Business leaders today cannot ignore the opportunity costs, time and resources consumed in a legal battle. Each hour spent in a dispute can be more productively used to seek new business ventures. A long drawn dispute drains management time and other business resources. If legal fees can be reduced, these expenses can then be channelled to drive the business, which in turn increases companies' profits. By first mediating, companies can reduce their financial and reputational risks when faced with a dispute. ■