

## The Role of Mediation in Dispute Resolution in Business Relations: A Literature Review\*

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### Abstract

The aim of article is to clarify the role of mediation in resolving business disputes. The authors examine the topic using a literature review. This research approach allowed them to address the research questions and reflect on the identified research gap. These reflections are theoretical and discursive. Importantly, the issues addressed in the article also have an applied dimension in economic practice. The article reports the findings of a critical analysis of relevant publications. The discussion underscores the issue's significance from both theoretical and practical perspectives and addresses the research questions. The first question considers how mediation affects the successful resolution of conflicts between business partners. The second addresses factors that influence this process. Based on the considerations presented, it was concluded that, in business practice, the use of the analysed method aligns with the understanding of conducting business activities that promote dialogue. Mediation is an effective way to resolve business disputes, provided a professional mediator is involved. It is worth emphasising that its initiation occurs at the point of conflict maturity, which supports dialogue based on trust. However, the effectiveness of the process also depends on the nature and complexity of the dispute, which determines the possibility of reaching an agreement and establishing the terms of a settlement. Achieving consensus among the parties participating in mediation can sustain cooperation and help acquire new skills useful in future business ventures.

**Keywords:** Alternative Dispute Resolution (ADR), mediation, managing disputes in business relationships

### Introduction

Conflict situations arise in all environments, social groups, and business operations (Madalina, 2015; Przyłępa-Lewak, 2022). They are most often perceived negatively. However, such interactions between parties can also trigger positive outcomes at both the individual and organisational levels (Tamm & Tōugu, 2022; Gallo, 2024). An argument supporting this position is the undertaking of actions such as finding new solutions, broadening thinking about a given problem, or initiating support for the creation of new or deepening existing interpersonal relationships (Ciekanowski et al., 2019, p. 40). It is worth noting that one of the characteristics of a mature approach to business is also breaking away from previously practised activities and implementing solutions that are not obvious from the perspective of established organisational routines (Glasl, 1982; Tjosvold et al., 2014). These may stem from conflict situations or from the solutions employed to address them (Makowski, 2022).

View conflicts primarily as opportunities for resolution through institutional solutions, which address consequences and foster settlements between business partners (Lipiec, 2023). The literature identifies these approaches (Maliszewska, 2023, p. 221):

- the use of the ordinary courts,
- the use of provisions contained in contractual terms through the application of dispute resolution using out-of-court proceedings,

- the use of alternative dispute resolution methods.

Mediation is one example of alternative dispute resolution (ADR) and is also applied in the civil law tradition (Bailey, 2020; Myślińska, 2023). Above all, it is regarded as a complement to, rather than a replacement for, the ordinary courts (Coben & Thompson, 2006; Maliszewska, 2023). Nowadays, mediation is used across all areas of the judiciary and in the context of amicable dispute resolution methods (Tanifum & Fabien, 2024). Its use is justified in the management of business disputes.

## **Objective and research approach**

This article explores the role of mediation in resolving business disputes. It presents theoretical considerations and offers a critical analysis (Walczak, 2015). The following research questions were adopted:

- How does mediation contribute to the effective resolution of conflicts between business partners?
- What factors influence the effectiveness of mediation in business relations?

The answers to these research questions are based on the findings from the analysis and a review of relevant theory.

## **Business disputes as the subject of research**

A dispute is a situation that disrupts cooperation between business partners and causes dissatisfaction for both parties (Rahim, 2023). Most often, it varies in severity and has differing consequences (Maliszewska, 2023, p. 219). Dispute management aims to develop informed, planned actions undertaken by an organisation to address conflict and utilise it constructively (Zhang et al., 2024). Consequently, it is not only important to resolve the conflict, but also to transform the situation into a process that will strengthen the organisation or develop new competencies (Wang, 2024).

Business partners are entities engaged in commercial activities. Here, their collaboration focuses on operational issues. This category encompasses disputes arising from legal relationships between entrepreneurs in the scope of their businesses. Entrepreneurs include sole proprietors and commercial companies (Gryz-Kasprowicz, 2024, p. 9). A commercial dispute involves issues of a business nature that cause conflict during joint ventures. Such disputes include, for example (Miszkin-Wojciechowska, 2023):

- disputes over payment,
- disputes over the payment of compensation in investor relations,
- disputes arising from construction contracts,
- disputes relating to the non-performance or improper performance of contracts concluded in commercial transactions, including in particular sales contracts, contracts of mandate and for the provision of services, contracts for specific work, tenancy, lease and leasing contracts, supply contracts, freight forwarding and transport, contracts concluded in the banking sectors, and contracts relating to investment financing, as well as patent disputes and disputes in the field of IT.

The situations outlined above can be resolved in various ways and through appropriately selected methods. Most often, the choice of method is determined by the attitudes and needs of the conflicting parties, as well as the nature of the personal relationships established before the dispute arose (Garfield, 2021). Relationships are the main factor in determining the final decision on the approach to addressing the situation (Lewicki et al., 2021). However, the priority is to consider various options that will allow the parties to address the situation.

## **The essence of Mediation**

Mediation is a recognised method of dispute resolution, serving as an example of an approach applicable to resolving disputes of various types and origins. It is defined as a type of organised, voluntary procedure, regardless of its name or designation, in which at least two parties to a dispute attempt to reach an agreement themselves to resolve their dispute, with the assistance of a mediator (Miszkin-Wojciechowska, 2023). Its use is justified in the management of business disputes. It is worth emphasising that amicable resolution of disputes and various conflicts, with the involvement of a third party, a mediator or professional intermediary, constitutes the essence of

mediation, which should be popularised by raising awareness more broadly and by directing this message to different social groups (Sobczak, 2018).

Skillfully conducted mediation helps resolve conflicts in a cooperative, non-adversarial manner (Rahim, 2023). Consequently, the success lies in achieving a 'win-win' outcome rather than a 'win-lose' result (Kretek, 2019). Importantly, such proceedings are conducted in situations where the parties attempt to maintain good relations in the future (including with a view to future cooperation) (Wityńska, 2022, p. 127). Their aim is to take actions that focus on the course, content and terms of a potential settlement.

Mediation in commercial cases is an example of a formal market institution that is regulated by law. This institution is associated with the most common methods of dispute resolution, namely, out-of-court settlement of conflicts (Martynoga & Sielenzak, 2018). The key element that allows a case to be classified as commercial is therefore the involvement of an entrepreneur in relation to their business activities, as opposed to other cases where the parties are not entrepreneurs or the dispute does not concern business activities (Wityńska, 2022, p. 119). Mediation offers the opportunity to regulate relations between the parties. It is worth noting that the business partners retain their say in the final resolution of the dispute (Wolańska-Wieczorek, 2022, p. 111). The primary aim of mediation, including out-of-court mediation, is to resolve the dispute swiftly, at the lowest possible cost and with maximum discretion. Most often, this aim is achieved through the conclusion of a settlement (Orłowski, 2015).

The concept of mediation is often equated with negotiation. It is therefore worth noting the distinguishing features of these two categories. In negotiations, the parties reach an agreement independently. Not all issues between the parties involved need to be contentious. Mediation is characterised by a dispute in which the conflicting parties seek the assistance of a third party, namely the mediator, to resolve the matter (Bismitha & Sundaram, 2021). This party should be neutral towards them, and their role is to support them in reaching a satisfactory agreement (Cisek, 2015, p. 26). When highlighting the differences between mediation and negotiation, it should be noted that, during mediation, the parties to the dispute may present their key issues and expectations to the mediator in individual meetings.

The literature on the subject highlights the key principles of mediation, which characterise its course and determine its scope. These principles concern the following issues (Rogozińska, 2018, pp. 92-93):

- voluntariness – this principle applies to both the parties and the mediator, as the parties enter the mediation process based on their own decision, but also in good faith, i.e., with a willingness to resolve the conflict; the mediator is obliged to inform the parties at the beginning of the mediation process that they have the right to withdraw from the mediation at any stage;
- acceptability – this principle is equivalent to the parties' consent to the mediator and their recognition of the principles of conducting mediation during its course;
- impartiality – the principle is understood as the mediator not taking sides with any party to the conflict; the mediator should not suggest a way to resolve the dispute, but may encourage the parties to express their positions and opinions and to negotiate the form of compensation or other elements of a settlement;
- neutrality – the principle means the mediator's duty to remain neutral regarding the method of dispute resolution proposed by the parties; however, the mediator may assess whether the concluded agreement can be given an enforceability clause if the parties wish to have the settlement approved by a court;
- confidentiality – the principle is understood as the mediator not disclosing information concerning the circumstances, course, and provisions of the mediation process to third parties; mediation parties may only share information with third parties that they have jointly agreed upon.

From an economic perspective, the following principles can also be added 'maintaining the informal and private nature of the proceedings, fostering mutual respect and a sense of security among the parties, including the achievement of satisfactory solutions for all parties to the conflict' (Orłowski, 2015, p. 15). From the participants' perspective in mediation, it is important to recognise that its key principle is voluntariness. However, the essence of mediation is also the reaching of a consensus, which means a situation where both parties are satisfied (Stachowiak, 2024, p. 12). In the event of any doubt, the parties have the right to change the mediator, which is linked to the principle of acceptability (Duda, 2021). It is worth noting that by reaching mutual agreements, the parties to mediation can continue cooperating and avoid losing the trust of future potential counterparties (Stachowiak, 2024, p. 12). According to Sobczak (2018, p. 174), disputes should be resolved primarily through mediation. As a result, this type of institution should be promoted by presenting it as a cheaper and faster option, and by emphasising an approach that is less antagonistic toward the conflicting parties than the judicial route.

In mediation proceedings, the mediator plays a key role, acting as a moderator, guide and companion to the parties. With the help of this third party, who is objective and neutral, the participants seek a solution acceptable to them. Furthermore, they move beyond the framework of their previous thinking (Gryz-Kasprowicz, 2024, p. 9). The mediator, having access to the parties' actual expectations and interests, is ideally placed to determine whether and to what extent the parties can reach a consensus. Their primary duty is to keep confidential any information obtained from a party that party has not authorised them to disclose (Grochowska, 2024, p. 15). The mediator's tasks include moderating the course of discussions, defusing tensions and providing support – without, however, imposing any solution – in reaching an agreement (Miszkin-Wojciechowska, 2023). This person acts as the guardian of the mediation procedure; therefore, their task is to oversee matters such as assessing the terms of the settlement from the perspective of the applicable legal order and the principles of social life (Rogozińska, 2018).

The mediation process comprises several sequential stages (Wityńska, 2022, p. 130):

- pre-mediation – the mediator establishes contact with the parties and creates an atmosphere conducive to reaching an agreement, as well as explaining the rules and conditions of the mediation process;
- statements by the parties – identifying the parties' interests and points of contention in order to guide the discussion and structure the mediation process, including the possibility of establishing the order in which topics are discussed. At this stage, the needs of both parties are articulated, and support is provided in understanding the opposing party.
- search for solutions and negotiations – identifying proposed solutions and analysing their usefulness and feasibility. Solutions are categorised as advantageous or disadvantageous for each party.
- drafting an agreement – drawing up a plan outlining the parties' obligations, methods of implementing the solutions, or the form of the settlement. Such an agreement should be confirmed in writing as a contract signed by the parties.

The stages outlined above indicate a series of actions that the participants in mediation should undertake at the appropriate time, whilst demonstrating commitment and a willingness to cooperate in the implementation of individual sub-tasks.

## **Discussion of the results obtained**

In line with research conventions, I aim to answer questions to deepen the analysis. The first question examines how business mediation affects the resolution of conflicts between business partners. This issue involves promoting and popularising this method among entrepreneurs and encouraging its wider use in business. The following arguments justify the usefulness of commercial mediation (Gryz-Kasprowicz, 2024, p. 11):

- it saves time and money,
- it ensures a constructive, secure and lasting solution, as it is developed and accepted by the parties themselves,
- it is forward-looking and focused on building a healthy business relationship,
- it allows one to hear and understand the motivations and concerns of the other party, which is valuable knowledge for developing sales and marketing strategies for one's services, and also opens up avenues for continuing better and more informed cooperation.

When an agreement is reached through mediation, every party wins, as a joint solution to the problem has been found, enabling further cooperation (Munduate et al., 2022). It should be added that this avoids or shortens lengthy and costly court proceedings, prevents antagonisation of relations, and maintains cooperation. This last argument is particularly important in business relations (Grochowska, 2024, p. 16). It also demonstrates the development of a culture of cooperation in business through dialogue and an understanding of differing positions. An important aspect of mediation, from the perspective of maintaining cooperation and regulating mutual relations, is the establishment and observance of the terms of the mediated settlement (Wolańska-Wieczorek, 2022, p. 113). Furthermore, the use of this method in managing business disputes reinforces the belief among the conflicting parties that they can actively influence issues important to them and develop practical solutions independently.

The second research question focuses on the factors that influence the effectiveness of mediation in business relationships. Undoubtedly, the mediator plays a key role in the mediation process. Their competence and professionalism significantly impact the effectiveness of the actions taken. Knowledge of the realities of a given industry and the specific nature of economic processes are strong arguments in favour of a particular mediator and their collaboration with the parties in conflict (Raines et al., 2013). In light of the above considerations, it should

be added that the mediator has no decision-making authority, and their role is limited to facilitating dialogue between the parties in order to find a mutually acceptable solution (Bożyk, 2025, p. 40).

The factors under consideration should be linked to the key principles that govern the conduct and organisation of mediation. By opting for this type of procedure, the parties retain full autonomy (Sleszyńska, 2024). Above all, they have the opportunity to reach mutually satisfactory resolutions and achieve a consensus. It also appears that the timing of the mediation is crucial and should be appropriate. Thus, an intervention that is too early or too late may reduce the effectiveness of the process. It is appropriate to use this alternative method of dispute resolution when the conflict is deemed 'ripe' for resolution (Jakubiak-Mirończuk, 2018). The guarantee of confidentiality – as a fundamental principle of mediation – enables the preservation of the good reputation of business partners and trade secrets (Sleszyńska, 2024).

The literature indicates that mediation requires goodwill and understanding from both parties (Zienkiewicz, 2023). Mediation often brings greater benefits than traditional dispute resolution, such as court proceedings. Its most commonly cited advantages are shorter duration and lower costs (Sleszyńska, 2024). Additionally, participant flexibility can be important, especially openness to unconventional solutions or compromise. The nature of each business dispute also matters, depending on its complexity and level of escalation (Coleman et al., 2021).

## Conclusion

The institution of mediation offers opportunities that should encourage its use in commercial disputes between partners and promote its use within the business community. In practice, this method aligns with a modern understanding of business operations. Reaching a mediated settlement can sustain cooperation and help acquire new skills useful in future business ventures.

Based on the above considerations, the following conclusions can be drawn:

- mediation is an effective approach to resolving business disputes, enabling participants to reach an agreement at a lower cost and in less time than through court proceedings,
- the effectiveness of mediation depends on the mediator's professionalism, including their communication skills and knowledge of economic realities and the relevant industry,
- the timing of the initiation of mediation is crucial, and this should be linked to the 'maturity' of the conflict as a prerequisite for mediation intervention,
- the fundamental principles of mediation foster mutual trust between the parties to the mediation process and contribute to constructive dialogue,
- the nature of the dispute and its complexity are crucial for reaching a consensus and establishing the terms of a settlement.

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