



Mediation: The Ideal Way to Resolve Disputes in the Blockchain/ Cryptocurrency Space

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Brief Overview

Recently, I was asked to mediate several disputes between Co-Founders and also between Advisors and Co-founders, of various platforms using blockchain technology and cryptocurrencies. The parties in the disputes were looking for a way to resolve their issues in:

- a confidential and non public forum so as to not alarm their current and future investors and participants;
- an inexpensive way as they wanted to use their funding to develop their platforms and solutions, rather than on lawyers;
- a fast way as time was of essence, and the longer the disputes existed, the more time was being taken away from other more useful activities; and
- a way that also allowed them to shape and have a say in the outcome.

Our current adversarial legal system and resorting to the courts would not have met their requirements because of it would have been public, costly and time consuming. Even arbitration would have been long-winded and costly in comparison to mediation. Moreover, they felt the need to regain control over the solutions and wanted a say in their disputes.

Indeed, the reality is often that no party in a dispute really wants to go to litigation, if it can be avoided. For these people, the answer is simply to involve the disputing parties in a process, facilitated by a neutral third party, which enables them to reach their own settlement. That process is called mediation.

Mediation is a voluntary, non-binding, and "without prejudice" process in which a specially trained third party (the mediator) intervenes in a dispute and attempts to bring the parties together into a settlement agreement.

If the mediation succeeds, and most of them do, it ends with a binding agreement. If anyone is dissatisfied with the process, either party or the mediator may terminate the mediation at any time. The parties may then proceed to assert their legal rights through arbitration or the courts.

Advantages of Mediation

There are a number of advantages to mediating a dispute rather than litigating. These include:

- *Speed of dispute resolution:* People rarely enjoy being in conflict. It is worrying, time consuming, and a drain on both financial and managerial resources. Mediation sessions can be set up very quickly - within days if necessary - unlike the judicial system or arbitration which can take months. In disputes involving blockchain and cryptocurrencies, it can be most important that the dispute is settled quickly in order that the platforms can continue to be developed, and operate.
- *Cost Savings:* This is a fairly obvious and major advantage. Because most cases are resolved in a day, legal costs are kept to a minimum, In addition, one must also factor in the time of the parties involved, such as in the cases I mediated, the Co-Founders and Advisors, which is kept to a minimum.
- *It improves communications:* People in conflict tend to take up rigid positions and resort to communicating with the other party via their lawyers. This can very often lead to misunderstandings arising due to the formality and length of the communications chain and the lack of intimate knowledge of the case by the lawyers. The face-to-face meetings which occur at the mediation allows open communication directly between the parties, and the carefully managed transfer of information by the mediator. The mediator has to be careful in controlling the mediation and making sure passions and emotive language do not interfere with the settlement process, as well as ensuring that all voices are heard.
- *Flexibility:* The Mediation process is voluntary, non-binding and without prejudice. Only a signed settlement agreement will be binding and enforceable. It also has no formal rules of procedure, so the mediator can use the process flexibly to suit the circumstances of the dispute. It addresses unreasonable claims and expectations. People who believe they are in the right very often become self-righteous, and get an over inflated perception of their case. The careful analysis of the dispute which takes place in the private and confidential meetings, often called private caucus, serves to put the case safely into perspective. A skilled mediator can also succeed in getting a party to view the case from the other party's perspective, which help resolution.

Why Mediation Works

- *It gets things off your chest:* The opportunity to sit down with the other party and tell them face-to-face what has occurred and what the effect on you has been goes a long way to defusing the situation and set the stage for the real work of reaching a settlement.
- *It provides the equivalent of a day in court:* As well as telling the other party what has happened, people seem to have a need for standing up and telling the world that they have been wronged. Even though the mediator is not a judge or jury and the mediation session is private, the mediator's very presence as an outside, neutral party seems to fulfil that emotional need.
- *It gives people a chance to see their lawyers in action:* Up to this point, they will only have had private meetings with their legal advisors and received letters from them. Now they have a chance to see them present their case and know something is finally happening.
- *It is a chance to hear the issues and facts:* This is also part of the communication process. It allows both parties to hear all the facts and issues together. They may not perceive them as being correct, and it will be the mediator's job to define and clarify the issues, but it does mean that all parties have listened to the same story.
- *It unearths the real issues:* The mediator helps parties to focus on the real issues in their dispute. Having got them agreed, the mediator starts to move the parties to a settlement. Sometimes, if a mediation does not settle on the day, it is because the real issues have only now been discovered and one or both of the parties may wish to discuss these with colleagues before continuing. A second session may of course be set up by the mediator - that's the beauty of a flexible procedure.

The Singapore Convention on Mediation

The United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation" was first signed in Singapore on 7 August 2019. As of writing, 52 countries, including the United States, China & India have signed the Convention. The Convention applies to international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute, including those in the blockchain/ cryptocurrency space. It provides an efficient and harmonised framework for the enforcement of international settlement agreements resulting from mediation, and means that if parties conclude a mediated settlement agreement in a signatory country, then that agreement can be enforced in other signatory countries. As the blockchain/ cryptocurrency space sees parties from various countries, having the Convention allows for easier enforcement of mediated settlement agreement.