MED-ARB

In one form of **Med-Arb,** the parties agree in advance that (either in any disputes that may arise between them or in a particular dispute that has arisen) a neu**tral will act first as mediator and subsequently, if needed, as arbitrator.** If agreement is reached in mediation, the parties sign a binding settlement agreement or the neutral may, by consent, convert their settlement into an arbitral award. If the mediation does not produce agreement on all issues, the mediator becomes arbitrator and hears and determines the unresolved issues. The award may be non-binding or binding depending upon the agreement entered into by the disputants.

Another form involves different neutrals fulfilling the roles of mediator and arbitrator. The feature that has attracted the most criticism is having both roles played by the same person.

There are several varieties of Med-Arb, such as **Non-Binding Med-Arb** (rarely used because there is no certainty of resolving the dispute); **Med-Arb Show Cause,** in which the award is merely tentative, and the parties are given an opportunity to show cause as to why the dispute should not be so resolved; and **Medaloa (Mediation and Last-Offer Arbitration)** in which the arbitrator does not reach an independent decision on the merits but instead must choose between the parties' final offers.

Arb-Med

This is the reverse of Med-Arb. The arbitrator's award is sealed and is not revealed while the arbitrator proceeds to conduct a mediation. If the mediation is successful, the settlement agreement between the parties governs the resolution of the dispute and the award is never unsealed. However, if mediation fails to settle all issues, the arbitrator-mediator will unseal the arbitral award and deliver it to the parties to resolve the dispute.

Arb-Med has been used in South African union management relations in the auto and steel industries and in the United States in police and firefighter arbitrations. Arb-Med has been proposed for use in the United States in the airline industry.

Minitrial

Minitrials involve a structured settlement process in which both parties present abbreviated summaries of their case before the other party and/or their representatives who have authority

to settle the dispute. The summaries contain explicit data about the legal bases and the merits of the case. The process generally follows more relaxed rules for discovery and case presentation than might be found in a court, and the parties usually agree on specific limited periods of time for presentations and arguments.

ADR: Mini-trial

There are actually two types of mini-trial: the "Executive Mini-trial" and the "Judicial Mini-trial."

Executive Mini-trial: An Executive mini-trial is actually not a trial. Instead, it involves a structured settlement process in which each side to a dispute presents abbreviated summaries of its cases to the major decision-makers for the parties who have authority to settle the dispute. The summaries contain explicit data about the legal basis and the merits of a case.

How is it done? The process generally follows more relaxed rules of discovery and case presentation than might be found in a court or other formal proceeding and usually the parties agree on specific limited periods of time for presentations and arguments.

A third party neutral may oversee a mini-trial. That individual is responsible for explaining and maintaining an orderly process of case presentations and may give an advisory opinion regarding a settlement range, if requested, rather than offer a specific solution for the parties to consider. The third party may also provide mediation services upon request.

When is it used? The rationale behind an executive mini-trial is that if the decision-makers are fully informed as to the merits of their cases and that of the opposing parties, they will be better prepared to successfully engage in settlement discussions.

Judicial Mini-trial: A Judicial mini-trial is an abbreviated hearing that involves attorneys for all of the parties to the litigation.

How is it done? Attorneys put on their clients' experts for a quick decision on the preliminary issue, by a Judge picked for that particular purpose. At the conclusion of the mini-trial, the judge renders a non-binding opinion. If the parties are unable to conclude a settlement, the case will proceed to trial in the normal manner.

When is it used? The Judicial mini-trial can be helpful when the parties are unwilling to negotiate on the full range of issues because they are "stuck" on a preliminary issue that both sides think they can win. The mini-trial on preliminary issues may be effective to break the logjam.

CONTRACT REVIEW BOARD

CRB is usually used in costly investment projects. Its purpose is to solve the disputes to avoid the work on the project being stopped. The board watches the project, proposes solutions of

disputes, which the parties are unable to solve themselves. The position of the CRB can be also used as evidence at court or arbitral proceedings.

INDEPENDENT EXPERT

The contract parties delegate on the expert the right to continuously solve disputes which might arise. The services of the expert are usually used to solve technical rather than legal problems. The expert's report may later become the pivotal impulse for commencing legal action.