



## 16. Update on compilation of materials related to: Negotiation/ Mediation/ Arbitration

Discussion Paper for the UIA Professional Practice Commission  
Meeting 23rd to 26th September 2009 in New Delhi/India

### **UIA PPC Meeting Marrakech 2008/ Minutes:**

MOTION: It was moved by Tillman Prinz and seconded by Louise Cox that a summary of existing materials on Negotiation/Mediation/Arbitration be compiled by Tillman Prinz and that the summary be included on the PPC Website as an "Interim Practice Note". The motion was approved unanimously by voice vote.

### **Part I.**

#### Definition

0. Negotiation is a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage, or to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution. In *Getting To Yes*, authors Roger Fisher and William Ury gives the following four principles for negotiations:

- Separate people from the problem.
- Focus on interests, not on positions.
- Generate options (that satisfy interests).
- Find objective criteria/ standards.

1. Mediation is a process in which a third-party neutral assists in resolving a dispute between two or more other parties. It is a non-adversarial approach to conflict resolution. The role of the mediator is to facilitate communication between the parties, assist them in focusing on the real issues of the dispute, and generate options that meet the interests or needs of all relevant parties in an effort to resolve the conflict.

2. Adjudication is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved

3. Arbitration, a form of alternative dispute resolution (ADR) is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound

4. Litigation to carry on a legal contest by judicial process.

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## Background

In the face of increasing cost and delay, many are turning to places other than the courts for resolution of disputes. In the legal profession this move away from the court system and towards other means has been termed "ADR," or, "alternative dispute resolution."\*1 "ADR" embraces "all means of dispute resolution . . . [which are] . . . alternatives to a formal decision-making process." Accordingly, the acronym "ADR" encompasses any method of resolving any dispute that does not require the ultimate decision to be made formally by a judge, a jury or any other decision-maker that has been designated as the competent forum of dispute resolution by the respective state authorities." (Christian Duve, Dispute Resolution in Globalization Context, 221 N.Y.L.J. 9 (1999).

## Policy

(to be defined)

## Part II.

### Items to addressed:

#### **A. Applicability of dispute resolution to conflicts in architectural practice**

Define the relevant disputes in architectural practice

##### Examples:

Client – architect

- Bad/ wrong advice of the architect
- Changes is in design
- Conflict in each work stage (RIBA
- Misinterpretation of desired design
- No agreement on the design
- Building permits on the “wrong” design”
- Wrong tender documents
- Wrong tender procedure without appropriate advice
- Contract administration/ supervision/ wrong certification

Client – contractor with architect as agent for supervising execution

- Accusation that the architect does not the supervision sufficiently

#### **B. Propose necessary measures in contracts and agreements**

##### Collect clauses

- Who provides them?
- Standard form of contract (UK + Ireland)
- Develop dispute resolution clause for the relationship of client/contractor, because of collateral warranty more than client/architect.
- A database of models and clauses regarding Dispute Resolution including Dispute Avoidance Mechanism used in the EU and elsewhere shall be developed as a reference and service to the ACE Members.
- Reword ADR clause in UIA/FIDIC Architect/Client Agreement –



- What services do exist for architects regarding Dispute Resolution in the UIA Member Organisations?
  - Mediation Boards
  - Arbitration Board
  - Other

Collect the relevant information at ACE Secretariat including other organisations, such as Dispute board rules international chamber of commerce

- Recommendations to UIA members: develop consistent means of dispute resolution.

### **C. Proposal for a UIA Dispute Resolution Board (DRB)**

Example: See attached RIBA Dispute Resolution

Attachments:

AIA Effective Negotiations  
AIA Mediation for Conflict Resolution  
RIBA Dispute Resolution

Tillman Prinz  
Berlin, 01 September 2009