Conflict management

In the most diverse areas of human relationships, conflicts can inevitably occur, as they are inherent to coexistence, generating tension and stress between those involved, challenging different perspectives and the most diverse ways of confronting and resolving them.

It is known that the judicial decision, no matter how good it may be, does not always support the best solution for resolving conflicts between the parties and often leads to heightened tensions and the abuse of existing appeals procedural mechanisms, further overloading the judicial machine. .

Innovation in the current paradigm of jurisdictional provision implies the inauguration of a new non-adversarial functional order, carried out harmoniously by legal operators through which the parties in conflict find an environment conducive to overcoming the controversy, characterized by the non-delegation of their solutions to the third party (judge).

Proper Dispute Resolution Methods

In this sense, we draw attention to MESC'S – Extrajudicial Dispute Resolution Methods or, as international doctrine calls it, ADR – Alternative Dispute Resolution. This expression has evolved to be understood today as adequate and non-alternative means of conflict resolution. Conflict resolution mechanisms can be treated in two groups: self-compositional, with characteristics of cooperation and construction of solutions by the parties themselves, and heterocompositional, with processing and decision-making by the third party.

They are:

- **Self-compositions: NEGOTIATION, CONCILIATION, MEDIATION**
- **Heterocompositive: ARBITRATION**

Briefly: **negotiation** is carried out directly between the parties, while **conciliation and mediation** rely on a third party facilitator between those involved, with solutions being constructed by the parties involved themselves. The main focus of conciliation is the agreement.

In arbitration, we have a private process through which the controversy between the parties is decided by a third party (arbitrator), chosen by the parties.

The advantages of these Methods are several: agility, reliability, privacy, secrecy, saving time and financial resources, effectiveness and efficiency for those involved in the treatment of these solutions. And, finally, they promote a preventive and pedagogical effect regarding the maintenance of the relationship between the parties from a future perspective (going forward).

DRB – DISPUTE BOARD RESOLUTION

Among the alternative means to the Judiciary, the DRB – Dispute Board Resolution stands out, which we will address under the name CRD – Dispute Resolution Committee, as it is a private instrument for resolving disputes, focused on preventing litigation by monitoring the execution of the contract by the Committee, which must be composed of technical experts in the field.

Although the CRD is an important instrument in resolving disputes, it is not suitable for all conflicts, and is currently applicable in construction and infrastructure disputes, given the complexity of these contracts and the need to comply with the established deadline, with quality and best value for money.

The use of the CRD is optional and such choice can be made by interested parties (individuals or legal entities) through the convention represented by the arbitration clause (previously inserted in the contract).

In the contractual clause or in the formation of the committee, the parties must define the binding force (obligation) of the CRD, and may grant it the prerogative to:

(i) present recommendations (Review Committee - CR or Dispute Review Boards – DRB);

(ii) (ii) make binding decisions (Adjudication Committee – CA or Dispute Adjudication Boards – DAB); or

(iii) (iii) to perform both functions as required by the parties (Mixed Committee - CM or Combined Dispute Boards - CDB)