

Frequently Asked Questions (FAQ's) about Mediation

What is mediation?

Mediation is a process by which an impartial third party facilitates a negotiation between parties who are trying to resolve a dispute themselves instead of having a court or arbitration panel impose a resolution on them. All discussions and documents used in mediation are confidential and “without prejudice” and cannot be used in later proceedings if the mediation does not result in settlement, nor can the mediator serve as a witness or arbitrator in the same dispute.

Why mediate?

Mediation saves the costs of litigation or arbitration, which can be very substantial; for example, prompt mediation can save significant attorneys’ fees and costs of discovery. Mediation is also much faster and enables the parties to preserve their commercial relationship. It can even enhance their commercial relationship by showing the parties that they are able to resolve their own disagreements themselves without resorting to arbitration or litigation.

Benefits of mediation

The intervention of a neutral third party can change the dynamics of direct settlement negotiations and remove barriers to effective communication between parties. Through the use of a number of techniques including private, confidential discussions the mediator can encourage each party to come off entrenched positions and disclose information which can lead to problem-solving and to settlement. Nonetheless, mediation is a party-centered process and it is the parties themselves, not the mediator, who determine the outcome and terms of the settlement when an agreement is reached.

How successful is mediation?

When the parties are serious about trying to resolve their dispute commercially without going to court or arbitration, mediation has a high success rate.

The arbitration clause of my charter party provides for arbitration in a place other than New York. Do I have to mediate in the place designated for arbitration?

No. The parties can agree to mediate in New York. If the New York mediation resolves the dispute then you do not incur the costs of arbitration or mediation elsewhere. If the New York mediation does not lead to resolution of the dispute then you can arbitrate in the location designated in the charter party.

When does mediation become legally binding?

Mediation only becomes legally binding when there is a settlement agreement signed by both parties. Until that time either party can decide to call off mediation and proceed with arbitration or litigation.

Can there be mediation of one or more, but not all, of the issues in a dispute?

Yes, the parties can decide to mediate one, some or all issues in a dispute. It is entirely up to the parties as to how mediation is used or not used to resolve a matter. Mediation is voluntary and flexible in how it is used to resolve disputes.

Do SMA mediators make settlement proposals during mediation?

At any time during the mediation process, the parties may request the mediator to make a non-binding settlement proposal. Because of their commercial backgrounds, SMA mediators are more likely to be able to offer a constructive and cost-saving solution.

What happens when mediation doesn't succeed?

If mediation fails despite the parties' and mediator's best efforts, they can resort to arbitration or litigation. Nothing is lost by mediating first, and the parties can preserve their rights to arbitrate or litigate under SMA Mediation Rules Article 12.

Can I start an arbitration and then decide to try mediation first?

Yes, and under SMA Mediation Rules Article 12 all rights under arbitration or litigation are preserved. Also, an arbitration can be started during the mediation in order to preserve rights or defenses.

Why does the SMA have an advantage in mediation of maritime disputes?

Most mediators are lawyers or retired judges who may or may not have had any commercial experience. SMA mediators, some of whom are retired lawyers, all have extensive commercial experience in the maritime industry and have frequently "been there before" in maritime disputes. They look at disputes as a commercial person would and not from a legalistic viewpoint.

Who are SMA mediators?

SMA mediators are members of the SMA who have met all qualifications for membership in the Society of Maritime Arbitrators as arbitrators under the SMA By-Laws and who have additionally received education and training in mediation through one of the highly reputed programs given by law schools and/or bar associations, and/or who have had extensive experience in mediation.