

SELECTING YOUR MEDIATOR - STAMPA ABOGADOS

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Mediation is increasingly held up as a time and cost-effective solution to dispute resolution, according to Gonzalo Stampa, Founding Partner at Stampa Abogados. It establishes a settlement without having to enter lengthy and more costly litigation or arbitration proceedings. However, he warns, when it comes to choosing the right mediator, parties need to be very careful.

"There have been individuals who decided to brand themselves as 'mediators' as a quick entry to market and to bill some hours," says Stampa. "The problem is that they have very little genuine understanding of the mediation process, how to handle it or the nuances of disputes, result in some major problems."

For instance, a mediator inexperienced in commercial disputes is less likely to be able to reach a mutually satisfactory settlement as these go beyond a financial remedy and often include provisions for things such as business agreements or apologies, explains Stampa, which are much more sensitive to negotiate. As such, the dispute is still unresolved.

Likewise, mediation settlements are generally regarded as contractual and non-binding, so a mediator needs to be able to encourage parties to honour their word. If one party does not fulfil the settlement, then it may involve going back to court to sue for breach of contract.

Stampa says the best course of action is to look for qualified mediators that are linked to a recognised institution, such as CIARB. These individuals are vetted by the organisations so will usually have the high level of experience and quality needed.

"Recommendations are also an important factor," Stampa summarises. "If a mediator is known for being reliable, discreet and effective, then that is a great indication of their quality and will give both parties involved in a dispute the confidence to enter mediation."