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Mediation: understanding conflict to better resolve it

Rédigé par Pierre-Alexandre DEGEHET, Partner. This first article forms part of a series of publications dedicated to mediation.

Three key takeaways

> **Conflict: a reality to be understood, not avoided**

Conflict is inherent in relationships, particularly in business life. It is not an anomaly, but rather the expression of diverging interests, needs, or perceptions. Effective management requires moving beyond stated positions to understand the underlying dynamics.

> **Behind positions: interests, needs, and breakdown of dialogue**

Conflicts often crystallize when communication deteriorates and positions become entrenched. Identifying unmet interests and needs, and restoring a space for dialogue, is an essential prerequisite for any constructive resolution.

> **From management to resolution: the structuring role of mediation**

Certain approaches, such as mediation, make it possible to restore structured dialogue and to place the parties back at the center of resolving their dispute. By fostering mutual understanding, they act as a lever for transforming conflict and pave the way for tailored, effective solutions.

1. CONFLICT

“Conflict is not the problem. The problem is how it is managed.” (Friedrich Glasl)

Conflict is an integral part of life, including business life.

Whether it arises in relationships between partners, in the performance of a contract, during commercial negotiations, or in governance situations, it is inherent in any interaction where interests, expectations, and perceptions—sometimes divergent—intersect.

In this respect, conflict is neither abnormal nor necessarily pathological. It is often the expression of an imbalance, a misunderstanding, or a divergence that calls for attention. The real issue, therefore, is not so much its existence as the way in which it is approached.

From a general standpoint, conflict may be defined as a situation of opposition or disagreement between two or more parties, arising from a divergence of interests, needs, values, or perceptions. In this regard, the Larousse dictionary refers to *“a strong opposition of feelings, opinions, or interests.”*

2. MULTIPLE FORMS

Conflict can take a wide variety of forms. It may be latent or overt, interpersonal or collective, and can arise across all areas of social life: personal, professional, commercial, or institutional.

Its perception—and therefore even its characterization—depends largely on the individuals involved, their cultural background, their experiences, and the way they interact. What may constitute a normal—albeit vigorous—discussion for some may be perceived by others as a conflict situation.

This diversity of perceptions calls for moving beyond the mere appearance of conflict and transcending stated positions, in order to understand its underlying drivers, often linked to the parties' interests and needs.

3. BEYOND POSITIONS: INTERESTS AND NEEDS

Behind the positions expressed by the parties—often framed in legal or adversarial terms—lie underlying, unmet **interests** and **needs**.

Needs relate to more fundamental dimensions, such as security, belonging, recognition, stability, the preservation of relationships, and personal or professional fulfilment. **Interests**, on the other hand, refer to what the parties are concretely seeking to protect or obtain (whether economic, organizational, relational, or strategic in nature).

As long as the conflict is approached solely at the level of positions, dialogue tends to become entrenched in a logic of opposition. Conversely, identifying and understanding each party's interests and needs makes it possible to shift the discussion and open up a more constructive space for dialogue.

This mutual understanding represents the pivotal moment at which conflict can move toward the search for solutions.

4. CONFLICT MANAGEMENT

The manner in which conflict is managed is, in this respect, of paramount importance.

Depending on the approach adopted, the same dispute may evolve into escalation, entrenchment of positions, or, conversely, toward a constructive resolution. As such, a range of approaches coexist.

Some favour the search for a solution through dialogue and collaboration between the parties. Others adopt a more adversarial stance, seeking a determination of the dispute, with a view to having one position prevail over the other.

From a legal standpoint, conflict takes on a particular dimension when it crystallizes around the existence, scope, or performance of a right or obligation. It then becomes a dispute, where one party asserts a legal claim against another and the latter contests it.

Depending on the circumstances, these different approaches are not mutually exclusive; rather, they may be combined and articulated as part of an overall dispute management strategy.

5. COMMUNICATION AT THE HEART OF CONFLICT

Beyond their forms and manifestations, conflict situations often share a common feature: a deterioration—or even a breakdown—of dialogue between the parties.

Conflict does not arise solely from a divergence of interests or needs, but also from the way in which such divergences are expressed, perceived, and interpreted. Misunderstandings accumulate, exchanges become strained, positions harden, and dialogue gradually breaks down. This breakdown in communication is a determining factor in the escalation of conflict.

As the parties cease to listen to—or understand—one another, the dispute tends to crystallize, making it increasingly difficult to identify the underlying interests and needs.

Conversely, restoring a space for dialogue is often a necessary precondition for any attempt at resolution. Enabling the parties to listen to one another again, to reframe their positions, and to better apprehend each other's expectations can help re-establish a more constructive dynamic.

6. A DISTINCT APPROACH: MEDIATION

In this context, certain approaches are specifically aimed at restoring the conditions for structured dialogue between the parties, enabling them to explore—beyond their initial positions—the interests and needs at stake.

Mediation falls within this framework.

Unlike approaches based on confrontation or the imposition of a decision, mediation does not seek to adjudicate the dispute, but rather to assist the parties in identifying a solution that they themselves develop, taking into account their respective interests and needs.

It thus provides a framework for restoring dialogue, overcoming position-based deadlocks, and exploring solutions tailored to the parties' specific circumstances.

7. REAPPROPRIATION OF THE CONFLICT BY THE PARTIES

Beyond the modalities of conflict management, a significant development lies in the parties' ability to reappropriate their dispute. In many situations, the conflict gradually escapes those who originated it. Positions become entrenched, exchanges deteriorate, and the resolution of the dispute is then perceived as necessarily requiring the intervention of a third party.

However, certain approaches enable the parties to reposition themselves as central actors in the resolution of their dispute. By refocusing discussions on interests and needs, and by restoring a structured dialogue, they provide an opportunity to develop solutions that are tailored to the realities of the situation.

Such reappropriation does not imply the absence of external intervention, but rather a repositioning of the parties at the heart of the decision-making process. In some cases, it makes it possible to move beyond a strictly adversarial logic and to adopt a more constructive dynamic.

Accordingly, and in line with the foregoing developments, it constitutes an approach that allows conflict to be addressed no longer solely as a matter to be decided, but as a situation to be understood and, where possible, resolved through a concerted process.

8. CONCLUSION

Conflict is neither an anomaly nor necessarily a dead end. Above all, it constitutes a situation which, depending on how it is approached, may lead either to a lasting opposition or, conversely, open the way to mutual understanding and the search for appropriate solutions.

Understanding the mechanisms of conflict, moving beyond positions, identifying interests and needs, and restoring dialogue are all essential steps in managing its development. As is sometimes aptly noted, “it is dialogue that liberates, not judgment.” Still, this presupposes that the appropriate tools and approaches are available to be deployed effectively.

A well-managed conflict may even become an opportunity: to clarify expectations, strengthen relationships, or foster innovation in the search for solutions. In this respect, mediation is far more than a dispute resolution mechanism — it is a lever for transformation.

OPENING – A SERIES DEDICATED TO MEDIATION

This first article forms part of a series of publications dedicated to mediation.

The forthcoming contributions will aim to explore this approach in greater detail: its definition, its underlying principles, its legal framework, its modalities of implementation, as well as the role of the various stakeholders—mediator, parties, and lawyers—together with the situations in which it may be employed and the conditions for its effectiveness.

The objective is to provide a structured and practical perspective, in order to better apprehend its benefits, its limitations, and the conditions for its appropriate use in dispute management.

Further publications will be released on a regular basis.

For any questions or for assistance in relation to the matters addressed regarding mediation, please do not hesitate to contact our partner Pierre-Alexandre Degehet (pierre-alexandre.degehet@kleyrgrasso.com).

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