Project management 101 *by Zavanak*

# 17. FINANCING & CONTRACTS


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# 17.4 Managing the contract


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# Starting work without a contract

Why would you start a project before everything is ready?

- Pressure from a deadline
- **Need to keep the project team busy**
- Stop someone else getting the job
- **Desire to get a new client or keep an existing one**

- Have a **letter of intent**
- **Operate on a cost plus basis**
- Put a limit on what will be done without a firm contract
- **Do you trust the client?**


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# Administering the contract

**Claims management**

- Day-to-day handling of minor breaches of the contract
- **Dealing with the contractual consequences of variations to the contract (like changes to specification, scope or an important supplier)**
- Claims may be settled in batches, not one by one

Large projects may have a full-time claims management team


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# The contract evolves as the project evolves

- **The contract must not be developed in isolation from the project planning.**
- The contract is a living document that must evolve as the project evolves.
- **Never agree to anything substantial without referring to the legal advisor.**


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# Handling serious claims and disputes

**The aim of sensible people is always to avoid litigation**

- Litigation is time consuming and expensive.
- **It is stressful and takes productive energy away from project work.**
- Confidential and sensitive matters may be aired in open court.
- **A judge's decision is imposed on the parties and must be accepted.**
- Working relationships may become acrimonious or even break down.
- **Very often the case goes to the brink and is settled out of court at the last minute.**

Alternative approaches exist to resolve disputes but need all parties to agree to submit to their findings.

- **Arbitration**
- Mediation


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# Arbitration

Arbitration is a process which avoids traditional litigation but has some of the same characteristics.

The parties make an **Arbitration Agreement** which appoints an **Arbitrator** who is empowered to impose a binding settlement on the parties.

Documents are submitted to the arbitrator.

A preliminary hearing takes place to see if the matter can be resolved before a full hearing.

Parties agree the terms of a resolution.

If a full hearing is necessary, witnesses and experts are called and cross-examined

A final and legally enforceable judgment from the arbitrator defines who must do what, and how costs will be apportioned and compensation awarded.


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# Mediation

**An independent mediator is appointed by both parties.**

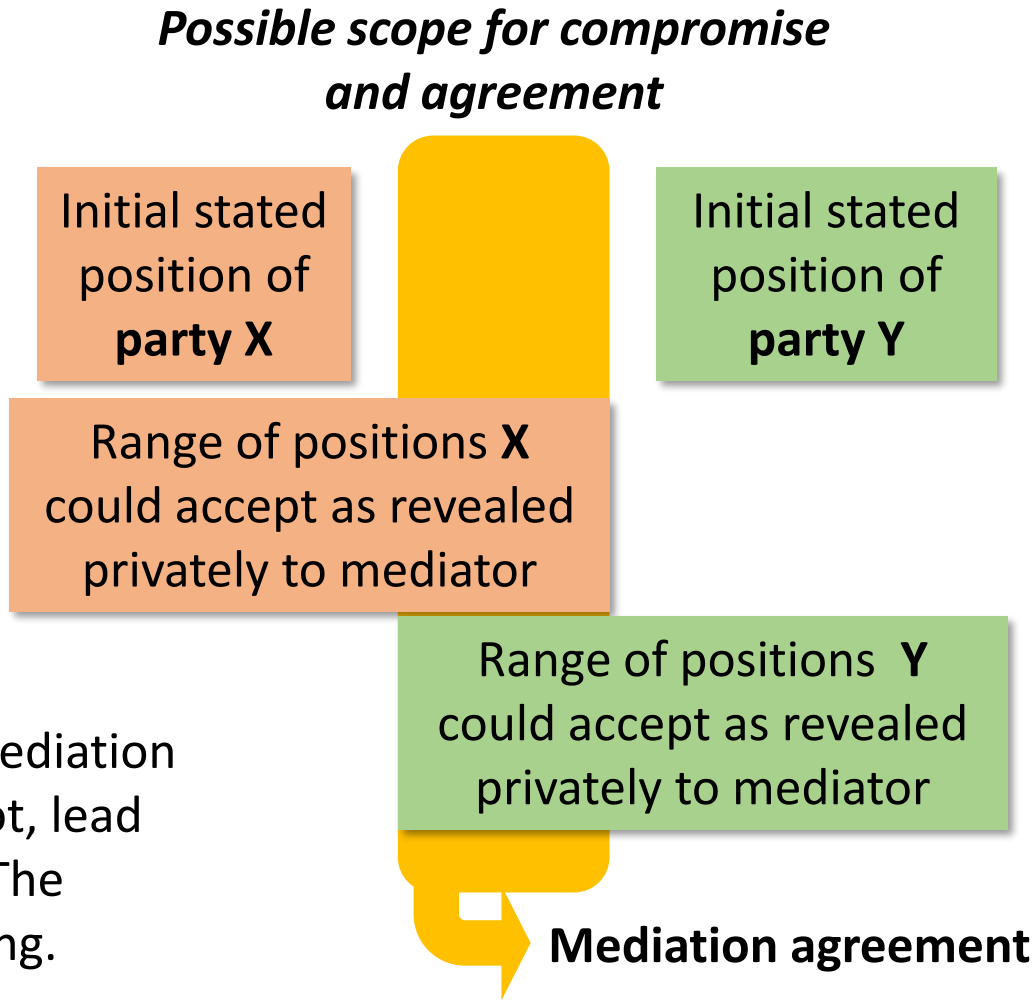
Each party recognises some merits in the other's case.

**The focus is on needs rather than contractual rights.**

The mediator tries to overcome obstacles to a settlement.

**The aim is for dialogue not adversarial behaviour.**

The process aims to produce a mediation agreement which may, or may not, lead to the contract being modified. The mediator does not decide anything.





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# Which route to resolution?

| Litigation | Arbitration | Mediation |
|---|---|---|
| Very expensive | Fairly expensive | Comparatively inexpensive |
| Slow | Pace driven by parties | Pace driven by parties |
| Generally public | Held in private | Held in private |
| Judge imposes settlement | Arbitrator imposes settlement | Moderator facilitates settlement |
| Judge may not be an expert | Arbitrator should be an expert | Mediator is an expert at resolution |
| Adversarial | Contested | Cooperative |
| Judgment is public | Parties may be constrained by an NDA | Parties may be constrained by an NDA |


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