Derains & Gharavi launches standing mediation body

Alison Ross

23 January 2025

Hamid Gharavi and Yves Derains

In an unprecedented move, Paris-based law firm Derains & Gharavi has launched a new standing ad hoc mediation platform, with its own set of rules and the firm's founders, Yves Derains and Hamid Gharavi, as mediators to help parties settle disputes, including during the cooling-off period in bilateral investment treaties or in parallel to investor-state arbitrations.

In an **article written** for GAR today, **Hamid Gharavi** explains the reasons for the firm's launch of **www.dg-mediation.com**, describing how both investors and states in cases the firm has handled, and in other cases, have been unhappy with the arbitral process and associated costs, disruption of business and delays, even when they prevailed.

Gharavi writes: "It was the sense of enormous waste and loss of opportunity arising from parties' failure to effectively use the cooling-off periods of investment treaties that drove our decision to create our own standing mediation platform."

"The platform created and launched by Derains & Gharavi may be used for investment disputes as well as commercial disputes. Its use can be proposed by investors to states, in cooling-off notices under investment treaties, or by states in their response to such notices. Or the parties can agree to its use in parallel to an investment or commercial agreement, or in a post-dispute commercial agreement."

He says mediation will be offered by himself and Derains, who have worked together for over 15 years and both have "a balanced track record of representation and nomination by diverse parties", either separately or together, or with a third mediator from within or outside the firm.

They will facilitate the settlement of disputes in part or in entirety, or merely assist in narrowing down the differences between the parties and making them understand each other's positions, "depending on the mandate and the level of active assistance required."

Gharavi stresses that the standing platform "forms part of the firm's support services, separate from its core legal practice" and was "inspired by industry developments and needs and the desire to support arbitration and dispute resolution rather than by any commercial ambitions".

He tells GAR part of the proceeds of mediations will be used to support professional athletes in need of financial help to compete on the professional circuit, sports funds such as Terre d'Impact, the fund of the French Tennis Federation, and recognised charitable organisations that promote "emancipation and integration through sports."

These will be selected on a case-by-case basis, applying "balanced considerations."

Intriguingly, he writes that the firm plans to launch a standing arbitration body in due course. The firm's website seems to hint at this, too, with a section entitled "Standing Platforms".

The mediation rules

More about the mediation initiative can be learned from the Derains & Gharavi Ad Hoc Mediation Rules, published on the firm's webs **in English** and **in French** and in force from the start of the year. These make clear that the pair will offer mediation alone, together, or with a third mediator, in English, French or a mixture of both.

Alternatively, parties can request mediation by Derains in Italian, Spanish or Portuguese; by Gharavi in Farsi; or by both together in one of these languages, with a translation provided for the mediator who does not speak it.

Parties can initiate mediation either separately or jointly, based on a contract or treaty, the dispute resolution clause of an investment law, or a post-dispute agreement.

When applying, the parties need to describe the dispute and indicate which of the firm's founding partners they wish to mediate it, or the procedure and criteria for nominating a third mediator from within or outside the firm, if that is what they want.

They also need to provide information about themselves and related and interested entities for a conflict check.

Mediation will officially start after all parties have received statements from the mediator or mediators confirming that they do not have a conflict of interest and declaring their impartiality and independence. If the parties want to proceed despite a disclosed conflict of interest, they will need to issue a declaration of consent.

There also needs to be agreement as to the mediators' fees and an acceptance by them of their mission.

Within 30 days of the start of mediation, the parties will file written submissions no more than 10 pages long, describing the dispute, naming their legal representatives and setting out their claims, counterclaims and defences.

They will also agree how far they want the mediator or mediators to go in settling or mitigating the dispute.

Within a further 30 days, the mediator or mediators will respond with a list of questions and requests for documents – also to be provided within 30 days. They will suggest a meeting date and agenda, to be decided in consultation with the parties during a mediation management conference call or videoconference.

Unless agreed otherwise, the meeting will be held in person in Paris, with the mediator or mediators and a maximum of four party representatives – including one with confirmed decision-making authority – present. Only one or two people may speak on behalf of each party.

In investment disputes, related and interested third parties may attend if agreed by the parties at the suggestion of a party or mediator.

At the meeting, the parties will provide concise openings and possible rebuttal statements and answer questions put to them. Then, the parties will meet jointly and separately with the mediator or mediators over a maximum of 10 days to explore partial or full settlement of the dispute or other ways to mitigate it.

If the dispute is not settled to the parties' satisfaction in the first phase, there may a second phase at the request of the parties. This will again consist of written submissions and in person meetings, adjusted based on the specifics of the case and the progress made in the first phase.

The mediation will be terminated upon execution of a binding and finding settlement agreement. Alternatively, it may be terminated if a party withdraws in writing; if the mediator or mediators declare an impasse following consultation with the parties; or if the parties fail to pay the mediation fees.

It may be re-opened upon written request of all parties if they believe that circumstances have evolved.

If settlement is reached, the parties may agree to appoint the mediators as ad hoc arbitrators to put the settlement in the form of a consent award.

The parties agree to participate in the mediation "in good faith and constructively" and in "a spirit of collegiality and mutual respect," with regard to cultural considerations. The parties and mediator or mediators also pledge to "do their utmost to allow the mediation to proceed with efficiency and celerity."

Upon written request of the parties, the mediators can clarify issues informally or form views on contractual provisions and on matters of jurisdiction, admissibility and interpretation arising from applicable investment laws and treaties, as well as the scope of their provisions, among other matters.

The existence of the mediation will not be confidential (unless the parties agree otherwise) but the submissions and discussions during the mediation and any views formed will be. The parties will not be able to use the same documents in subsequent proceedings of any type unless agreed in writing.

The fees of the mediation will be shared by the parties unless agreed otherwise, with lump sums payable for each mediator for each phase as agreed in advance. They will also get fees for drafting and issuing a consent award.

Fees will be set and agreed "according to the specifics of each case" and paid in instalments following an initial deposit. Expenses will be limited to the cost of conference room facilities and any travel and courier services.

If the parties agree, the mediator or mediators may be assisted by an associate of Derains & Gharavi, who is bound by confidentiality and duties of impartiality and independence. There will be no further payment for this.

The rules can be "adjusted" upon agreement of the parties or, on certain matters, by the mediators, depending on the specifics of the case.

Welcomed by the disputes community

The new standing platform has met with enthusiasm from in-house counsel. **Jaspe Gonzalo**, general counsel of Vinci Construction, tells GAR: "I believe this is a remarkable and innovative development since mediation is indubitably becoming the investor preferred mechanism to overcome – within a business suitable timeframe – many conflict situations."

"Yves and Hamid's initiative is consistent with current investors' expectations in the field of modern disputes resolutions procedures, especially when the economic sustainability of commercial businesses and investments depends on the outcome of a dispute, which is quite often the case. With this in mind, I think that a standing mediation body chaired by prestigious and experienced first-class arbitrators such as Yves and Hamid makes perfect sense."

Samer Amro, Chief Legal Officer of the Al Ghurair group, says: "This is a very creative and immediately operational mechanism that inspires the confidence of parties as it meets a practical need and is led by two highly experienced and reputable practitioners."

Leading figures in the international arbitration community have also been quick to welcome the initiative. Swiss arbitrator **Charles Poncet** says: "A standing mediation platform to help steer investor-state and commercial disputes towards a mutually acceptable solution is a long overdue initiative, which is likely to be very successful because it is being promoted by two highly respected practitioners in our field. In my view, investor-state arbitration suffers from a somewhat unfriendly – sometimes even hostile – climate nowadays, which makes arbitrators edgy and sometimes results in bizarre awards seeking to placate the state instead of protecting the investor. In commercial matters, let's face it, the costs are out of control."

"Welcome as it is, such a platform cannot be operated by just any mediator, no matter how skilful. Mediating that kind of dispute requires accomplished and unanimously respected practitioners with wide experience of international arbitration. The parties have to know that mediation will not only save costs but also ensure that the mutually acceptable solution it strives to achieve and reach will be based on the mediator's decades of experience in international arbitration."

"Yves and Hamid qualify without any doubt in this respect for it is only with years of experience that one can spot the areas in which patient and light-handed persuasion will gently usher the parties towards an agreement. Yves and Hamid deserve to be praised for this remarkable initiative."

Philippe Pinsolle, the Geneva-based head of international arbitration for continental Europe at Quinn Emanuel Urquhart & Sullivan, says: "I believe that creating a standing body is a great move. The bet is that a standing offer will generate demand. With the quality of the offer in this case, I have no doubt that it will succeed and attract the attention of governments that genuinely want to address the claims made against them, as opposed to those that will kick the can down the road in the hope that the next administration will deal with it."

"The next step will surely be a standing arbitral tribunal – and Hamid alludes to it in his article. This could generate demand too, either for real cases or for mock purposes."

"The attraction of standing bodies is that you save a lot of time by not having to put the body in place. This is surely an initiative to watch."

Alison Ross

alison.ross@lbresearch.com

View full biography