

# Corporate Disputes: Why is Mediation Relevant and How Does it Work?



# Our Speakers - First Half



**Joe Tirado**  
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Coaching Conflict International  
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Supreme Court  
India



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Motta, Fernandes Rocha  
Brazil

# Program - First Half

## 1. Overview of mediation

- Most common disputes in closely-held companies
- Mediation: advantages and limitations

## 2. Mediation process

- Opinion from panelists
- Questions from the audience

## 3. The outcome of mediation

- Opinion from panelists
- Questions from the audience

# The Panel Would Like to Know Who **YOU** are!



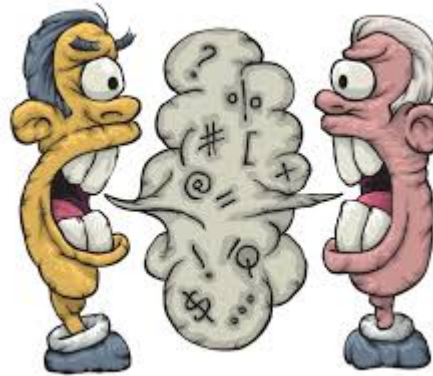
# Most Common Disputes In Closely-held Companies

- Disputes between shareholders:
  - Over control
  - Compensation \$\$\$
  - Family issues and succession - emotion
  - Commingling of business and personal life and expenses



# Most Common Disputes In Closely-held Companies

- Disputes between founders
  - Relative contributions
  - Informality and need for more structured management as the business grows
  - Valuation and lack of liquidity



# Mediation: Advantages and Limitations

## What is mediation?

A process in which an impartial or neutral third party assists disputing parties in finding a mutually acceptable solution to their dispute(s).

# Mediation: Advantages and Limitations

## What is mediation?

- Alternative Dispute Resolution
- External independent facilitator
- Voluntary and participatory
- Creative solutions acceptable to both parties
- Mutual beneficial settlement of dispute and related/connected cases



# Mediation: Advantages and Limitations

## Advantages and limitations

- Control over the process
- Informal and conducive environment
- Speed and efficiency
- Simplicity and Flexibility
- Confidential
- Enhanced communication
- Long term and underlying interests of both parties
- Promotes finality

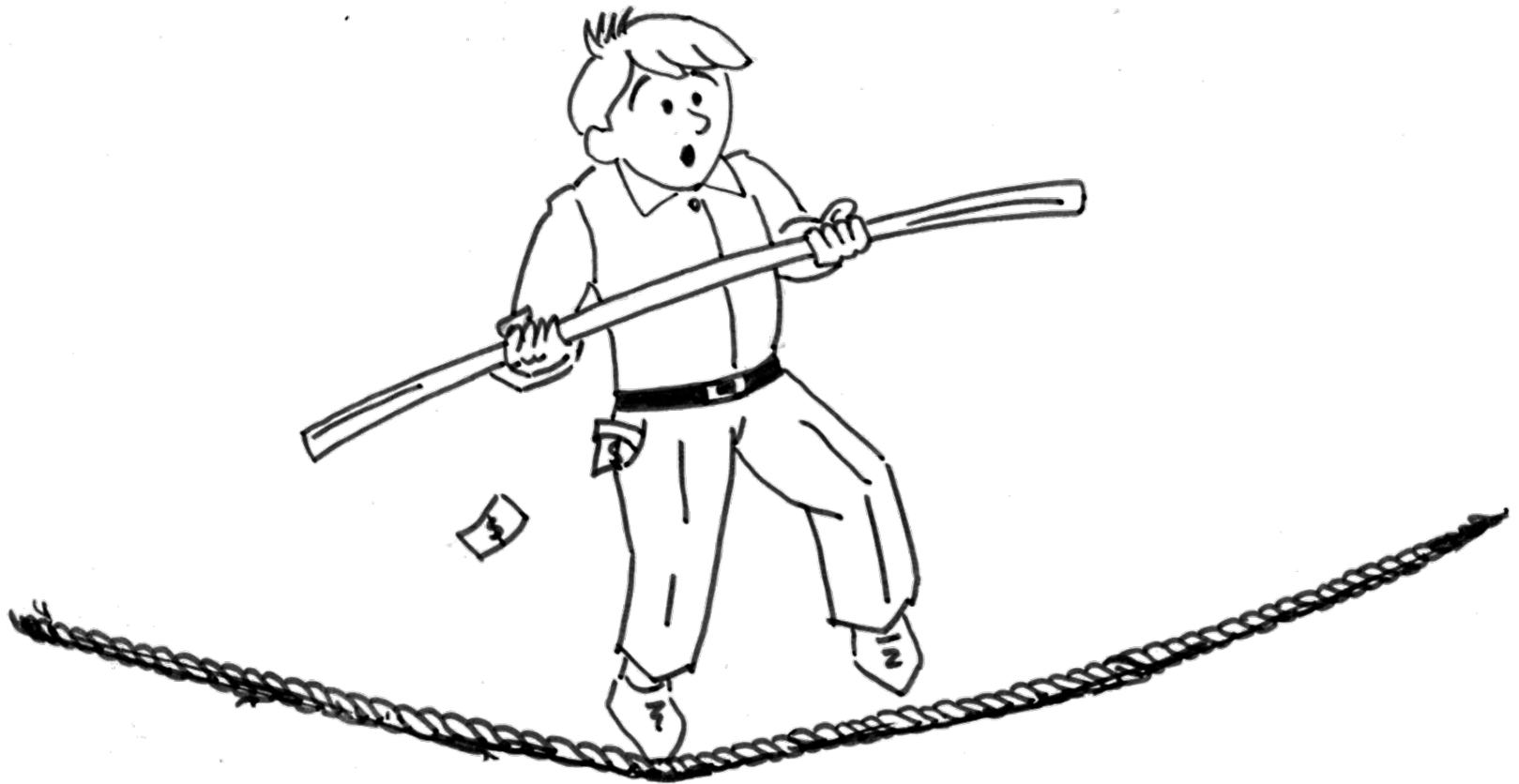
# Mediation: Advantages and Limitations

## Litigation



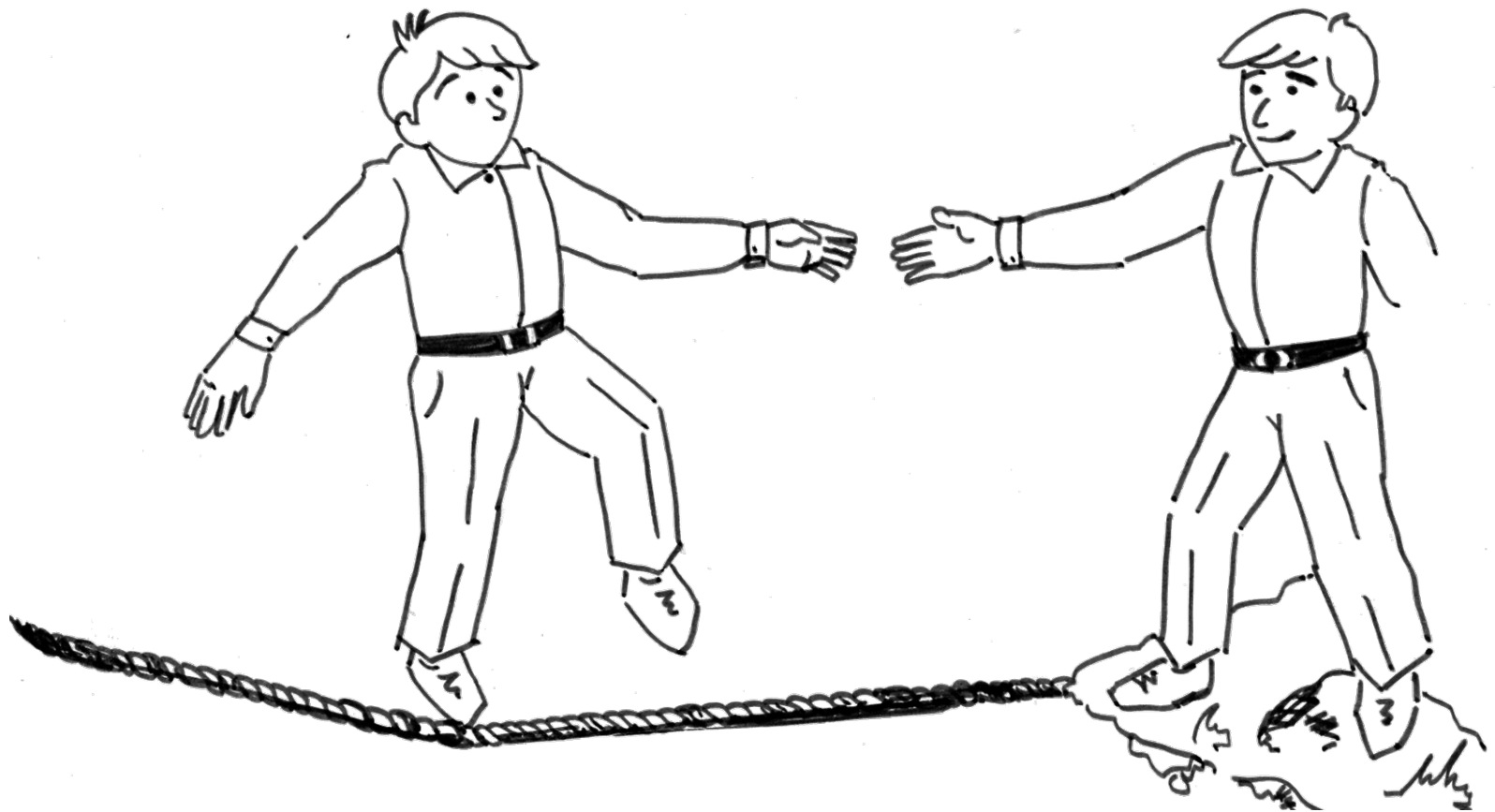
# Mediation: Advantages and Limitations

## Arbitration



# Mediation: Advantages and Limitations

## Mediation



*Courtesy of Rajiv Dutta*

# Mediation Process

When does it make sense to mediate?



# Mediation Process

How is mediation conducted?



# Mediation Process

## Selecting the mediator



# Mediation Process

How about “apologizing”?

*I'm sorry!*





# Mediation Process

## Questions from the audience



# Outcome of Mediation

What happens when you reach an agreement?



# Outcome of Mediation

How is the agreement enforced?



# Outcome of Mediation

## Managing a “failed” mediation



# Outcome of Mediation

Questions from the audience



# Our Speakers - Mock Mediation



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# Example of Mediation Provision (CEDR)

“If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (“ADR notice”) to the other party[ies] to the dispute, requesting mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than [28] days after the date of the ADR notice.”

# For Further Reference

## **International Chamber of Commerce**

- Suggested Clauses for ICC Mediation

## **Center for Effective Dispute Resolution**

- Model ADR Clauses for Use in Commercial Contracts



# Thank You!

