

**WELCOME TO THE WORLD**

**OF**

## **GlobalMedArb**

**An Effective Means of Online Commercial Dispute Resolution**

### **INTRODUCTION**

What does **GlobalMedArb (GMA)** do? To begin with, it provides a new and innovative service dedicated to matching the efficiency of electronic technology to the increasingly popular means of solving international commercial disputes through a non-judicial procedure known as **Alternative Dispute Resolution (ADR)**. The original purpose of **ADR** (which dates to a time before adjudication) was to provide disputants with an inexpensive, informal and expeditious method for settling their differences. Unfortunately with its modern development the opposite has occurred, so that **ADR** is now as expensive and time consuming in many instances as litigation and more legalistic than intended. For these reasons, **GMA** was created to provide specific processes in which international commercial enterprises can settle differences through low cost and inexpensive means by utilizing **Online Dispute Resolution (ODR)** services.

### **REASONS FOR USING ADR**

It has been estimated that in 2005, the volume of B2B international commercial transactions will approximate 8.5 trillion U.S. dollars. As a result, a large number of commercial disputes are inevitable, especially on a global level. Since most commercial entities involved in international trade prefer not to proceed before the courts of a foreign nation, it is expected that a considerable number of disputants will seek to have their differences determined by **ADR**, as a non-governmental means for peacefully resolving conflicts in lieu of litigation. The concept is based upon utilizing neutral third parties for solving differences that can't be settled through negotiations.

### **AN INNOVATIVE SYSTEM UTILIZING THE INTERNET**

By merging means of instant electronic communications, through use of email, telephone, audio and video conferencing, with the most commonly used functions of **ADR** such as **Mediation** and **Arbitration**, as well as the newly devised forms of **Early Neutral Evaluation (ENE)** and **Expedited Review**, **GMA** has created a unique set of services within the new electronic procedure of **ODR**. Use of the non binding forms of **ENE** and **Mediation** at the early stages of a dispute (where the parties are kept physically apart), enables the disputants to maintain an on-going relationship through what is known as **Dispute Risk Management (DRM)**. By attempting to create a non confrontational solution at the initial stages of a dispute, **GMA** seeks to continue the contractual relationship as originally intended by the parties.

## **BRIEF DESCRIPTION OF GMA's SELECTED SUITE OF SERVICES**

While settlement through direct negotiations between parties is considered the best means for resolution, adjudication is believed to be the least desirable and most expensive. Various types of **ADR** processes including **ENE**, **Mediation**, **Arbitration**, and **Expedited Review** fill the spectrum between the two. In all fairness, it must be recognized that none of these function perfectly in all settings. **GMA** provides services that differ from conventional **ADR** in that they are specifically attuned to specific electronic means. These include secured email for **ENE**, confidential closed circuit telephone communications for **Mediation** and split screen video conferencing from desktop computers for **Arbitration** and **Expedited Review**.

### **ENE**

**ENE**, a form of assisted negotiations, is the least expensive and most expeditious system provided by **GMA**. It encompasses a procedure through which the disputants submit their positions by secured and user-friendly email to a **GMA** appointed Neutral with expertise in the subject matter. Within three days, the Neutral informs the parties whether, in his or her opinion, their offers or demands are either (1) close enough to be settled by continued negotiations; (2) within a range resolvable through **Mediation**; or (3) not favorable to resolution except by litigation or **Arbitration**. In the event of (1) or (2) above, the parties may at their option request that the Neutral propose a written settlement agreement. There are at last count a little over 50 **ODR** providers offering all types of electronic **ADR**, none of which provides contractually bound enterprises with a simple process for submitting disputes for evaluation by an experienced neutral evaluator. The opinion of the latter, although suggestive and therefore non-binding, enables the disputants, at a relatively inexpensive cost and without need of outside counsel, to settle their differences while maintaining an on-going business relationship.

### **Mediation**

**Mediation** is a relatively inexpensive procedure involving an appointed neutral or neutrals serving at the sufferance of the parties. The **Mediator** orally submits various possible alternatives toward a possible settlement. The success of **Mediation** depends to a large degree upon the trust that the parties impart to the neutral in divulging the extent to which they are ready to concede on any position. Usually settlement occurs through separate meetings between the **Mediator** and each of the parties. For various reasons including the fact that it is non-binding and therefore does not require the services of outside counsel, **Mediation** is currently the fastest growing form of **ADR**. When the parties are from different cultures, it often proves beneficial to have more than one **Mediator** appointed from the respective nations of the parties. **GMA** is the only **ODR** provider offering **Mediation** by confidential, closed circuit, telephone communications. As a result, there is a considerable savings in travel, hotel and meal expenses as well as a lessening of scheduling difficulties. In addition, the cost of the procedure is relatively inexpensive. A time limit of not more than thirty days is applicable to preclude delays. Other than at the beginning of

the process, in order that the parties may present their respective positions together with the dates and times of availability, and in the event of final settlement, all telephone conversations will be unilateral and confidential. This by itself assists in attaining **DRM**. If the **ENE** provision in the commercial agreement is linked to **Mediation** and the matter is not resolved through the former procedure, the disputants will automatically move to the latter process with either the Neutral Evaluator or another party at their request serving as the **Mediator**. Additionally, the contractual agreement providing for **Mediation**, in the event of failure to resolve the dispute within the required time period, may be tied to a finalized hearing in **Arbitration**.

### **Arbitration**

This most commonly used form of **ADR** will be provided by **GMA** through split screen video conferencing utilizing desktop computers. It results in the determination of a dispute, following an adversarial trial type proceeding in which the Arbitrator or Arbitrators serve as triers of law and fact in lieu of a court. **GMA's** unique server based platform provides all of the parties with a simple means of participation in the **Arbitration** proceeding. Each participant clicks on a link in an email that has been provided in advance and then plugs into his or her computer a web cam (small video camera) and headset provided upon request. It is that simple – no additional installation or setup required. Where the services of one Arbitrator are utilized, he or she is selected upon concurrence of all of the parties. In tripartite or multiparty **Arbitration**, each disputant selects an Arbitrator who in turn selects a chairperson. The parties are free to choose anyone to serve in these capacities except that the single Arbitrator or chairperson may not be a national of the same country as any of the parties. In the event the parties are unable to agree upon a single Arbitrator or chairperson, selection will be by **GMA**. Upon request, a list of potential Arbitrators with expertise in the area of dispute will be provided by **GMA** to the parties.

### **Expedited Review**

This is a new **ADR** process created by **GMA** to counter the criticism of **Arbitral** decisions being non-appealable. As a result, the parties may insert an option clause in the **Arbitration** provision of the commercial agreement providing for an abbreviated review through a panel of international legal experts. In that event, any disputant dissatisfied with the **Arbitral** decision may electronically submit a request for review. Briefs may be filed by secured email and oral argument presented within a limited time period, by video *or* audio communication with the members of the panel. The expedited ruling will be by majority vote, consisting of either the single word “upheld” or a reasoned opinion if the arbitral decision is overruled. No dissenting will be issued.

## Principals

A management team combining the skills of law, dispute resolution, and technology has been formed by GMA. **Robert Bennett Lubic**, the Chief Executive Officer and General Counsel, is a highly reputed and published law professor and professional arbitrator and mediator, who has lectured on **ADR** throughout the world. **Douglas Wolfire**, the Chief Technology Officer, is an experienced software engineer and a principal and founder of MadWolf Technologies of Washington, D.C. **Torsten Volk**, the Operations Manager, is an experienced IT project manager and business consultant.

## CONCLUSION

All of the electronic communications applicable by **GMA** through its various **ODR** services are quite simple and user friendly. As a result, they provide a more expeditious, inexpensive and informal approach to dispute resolution than is generally available through conventional ADR institutions. At the same time, distancing the parties through **ENE** or **Mediation** while attempting to settle the dispute enables them to maintain an on-going relationship through **Dispute Risk Management**. **GMA's** services may also be used in a non-international commercial dispute setting if desired. More detailed information may be obtained by consulting **GMA's** Web Site, <http://www.globalmedarb.com>, or members of its staff.

## APPENDIX

**INITIATION OF SERVICES** - By accessing **GMA's** Web Site, [www.GlobalMedArb.com](http://www.GlobalMedArb.com), for copies of suggested **ODR** clauses at no cost and inserting one of the applicable provisions within the terms of a commercial agreement. In the event that a dispute arises between the parties to the agreement, **GMA** may be contacted by electronic communications or registered or certified mail, requesting initiation of a selected process. A Case Officer will be immediately assigned to guide the parties in the procedure. All subsequent communications will be by selected secured electronic means. Upon request, a Technical Officer may be assigned to aid any party in utilizing any technical device.

**RULES AND REGULATIONS** - The substantive law applicable to all proceedings will be the United Nations Convention on the International Sale of Goods (a commercial combination of the Civil Law and the Common Law, also known as the Vienna Treaty), unless the parties agree otherwise. The rules of evidence governing a hearing will be the most recently published version of the International Bar Association Supplementary Rules Governing The Presentation And Reception Of Evidence In International Commercial Arbitration, unless the parties decide otherwise. The rules of procedure for **Mediation** or **Arbitration** shall be those of the United Nations Commission on International Trade Law, supplemented by the **Mediation** and **Arbitration** rules of **GMA** as relative to electronic means of communication. Rules of procedure for **ENE** and **Expedited Review** have been formulated by **GMA**. Copies of all pertinent rules and regulations will be provided to the parties at no cost.

**ENFORCEMENT OF AGREEMENTS OR DECISIONS** - The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, more popularly known as the New York Convention, adopted in over 130 countries (including all of the industrial nations of the world), provides among other things that the courts of any ratifying nation will be barred to parties entering international commercial **Arbitration** agreements. In addition, Arbitral decisions shall be directly enforceable by the courts of any other ratifying nation without further judicial action. Under **GMA's** rules, any **ENE** or **Mediation** settlement agreement, with the consent of the parties and subject to local law, may be written as an **Arbitration** decision in order to take advantage of the New York Convention. To date, the New York Convention has proven itself as an effective alternative to foreign adjudication. A current list of all nations that have ratified the New York Convention appears on **GMA's** web page.