

What is ADR?



Alternative Dispute Resolution ("ADR") - the non-litigious options to resolve disputes without going to court; with third-party intervention, the most common ADR procedures include negotiation, conciliation, mediation, and arbitration

| Negotiation | Mediation |
|---|---|
| <p>Direct or indirect communication between the disputing parties to take a joint action to resolve the dispute.</p> <p>It is a voluntary, bilateral or multilateral, non adjudicative, informal, and confidential ADR Process.</p> <p>When it is successful, all parties agree to sign a Negotiated Agreement.</p> | <p>The appointed mediator encourages the parties to consider, not their legal rights, but their commercial interests, and aims to get them to agree to a compromise that will give each sides something. No decision/awards are passed by the Mediator.</p> <p>When all parties agree to observe the outcome, their signature to the mediation agreement makes it legally binding.</p> <p>The majority of mediation cases are settled in a day or so.</p> |
| Conciliation | Arbitration |
| <p>An independent voluntary proceedings where the parties ask the neutral conciliator to provide a Non-Binding Settlement Proposal.</p> <p>The conciliator generally takes into account the parties commercial, financial, personal and legal position before presenting the settlement proposal.</p> <p>Venue, time and content of conciliation process is fixed by the parties.</p> | <p>Both parties appoint an neutral expert person, the arbitrator. After hearing both parties, examination of evidence /documents, the arbitrator presents an arbitral award which is binding and enforceable.</p> <p>It is a quasi-legal process so it's less formal and can be adapted to suit the needs of the disputing parties.</p> <p>The hearings take place at a mutually agreed venue.</p> |

ADR vs. Formal Litigation in Court



ADR procedures speed up dispute settlement than that of litigation route, and therefore in general it costs less in time, money and stress levels

- **ADR is generally suitable when:**

- ✓ The parties are willing to negotiate and share a mutual future interest
- ✓ The legal framework does not provide a final solution or a commercially tailored, resilient resolution of the conflict
- ✓ A relationship must be preserved or a long-term relationship needs to be carefully terminated
- ✓ Multiple conflicts exist between the same parties
- ✓ The case requires confidentiality
- ✓ More parties are stakeholders to the conflict than process parties alone
- ✓ There is a need to limit costs
- ✓ There is a desire for a less formal process
- ✓ Quick resolution to the dispute is desired
- ✓ Arbitration permits the parties to choose subject matter experts to judge their dispute where as judges in state courts are less likely to acquire the same degree of expertise

- **ADR is generally not suitable when:**

- ✗ There is a need for a precedent or public ruling, e.g. matters of legal status
- ✗ There is an excessive power imbalance, or at least one party cannot defend itself
- ✗ Health problems of one party inhibit participation in mediation
- ✗ A party exhibits interest in delaying tactics or pure "fishing expeditions"
- ✗ Negotiation is seen as a sign of weakness, or is used to please the referring organization / party
- ✗ One or more parties cannot trust the other to abide by any agreed settlements