

Alternative Dispute Resolution

Beyond dispute

ADR is becoming the first choice for many when it comes to settling commercial disputes, as parties seek to avoid lengthy and costly court dates



Maciej Durbas

Maciej Durbas, associate at Polish law firm KKG Kubas Kos Gaertner, tells ACQ Magazine why there's less emphasis on the 'alternative' part of ADR these days as it continues to challenge the more traditional court litigation. In many cases the advantages of ADR, when used effectively, appear to be beyond dispute.

The use of the word "alternative" in the term Alternative Dispute Resolution seems to presuppose that methods, different from the state court litigation, are unusual or constitute a "backup" for what was considered to be "normal". The reality of cross-border commercial disputes proves to the contrary. Contemporary business is getting closer and closer to the moment when it is litigation that will be treated as exceptional.

How do ADR methods differ?

ADR methods are undoubtedly better for some disputes. Firstly, they are confidential. ADR mechanisms provide for a discrete possibility to solve a dispute without the press waiting outside the door. As it was once perfectly phrased, arbitral or mediation proceedings look like a regular business meeting from the outside. What is more, in mediation and conciliation parties usually aim towards saving business relationships and do not "fight

with lethal weapons", which is typical for litigation (and arbitration). These features are particularly important for corporate and, especially, M&A disputes.

What are the costs?

ADR can also – but not always – be cheaper. The costs of litigation on a different continent, in a foreign language and under an unfamiliar law can be exorbitant. Costs of a few days of mediation or conciliation proceedings, on the other hand, are significantly lower.

Does it offer more choice?

Last, but not least, ADR is considered to be a "creature that owes its existence to the will of the parties alone". For instance, if the parties find that a certain dispute can be resolved better by a non-lawyer, it is up to them to appoint an expert in the particular field.

What is more, there is an ongoing tendency to merge different methods of dispute resolution, e.g. combine mediation or conciliation with arbitration. This is because all of them have certain drawbacks, which can be overcome by combining them with other methods.

Concluding, ADR is something to be accustomed to. It simply offers more than litigation. It just has to be used effectively.

DETAILS

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