ADR: pros and cons

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Types of ADR

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<td>Over the past three decades, alternative dispute resolution (ADR) has increased in popularity to the point that most parties appear to prefer it to having the courts resolve their conflicts.</td>
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**Types of ADR**

Article 17 of the Political Constitution acknowledges various means of ADR, including commercial mediation, conciliation and arbitration.

'Mediation' is a form of dispute resolution to which parties voluntarily submit and, with the help of a third party (who has no decision-making power), try to reach an agreement on the matter in dispute.

'Conciliation' is a voluntary proceeding through which two or more parties attempt to resolve a dispute with the aid of a conciliator, who will propose alternative solutions.

Finally, 'arbitration' is an agreement by which the parties thereto agree to submit any disputes that may arise regarding their specific (contractual or non-contractual) legal relationship to a third party (ie, arbitrator), whose decision is binding.

**Pros**

ADR has a number of benefits which have led it to become the preferred method of dispute resolution.

First, it is flexible compared with judicial proceedings. Further, it allows parties to have a certain prominence, as it offers a level of active participation which is not available in judicial proceedings.

In addition, ADR allows parties to settle a dispute in a favourable manner without having to resort to the courts, which undoubtedly reduces costs. For example, in mediation or conciliation, parties can avoid the incurrence of attorney's fees if the dispute does not proceed to the courts. Unfortunately, the same does not apply to arbitration as this means of ADR can be quite burdensome.

**Cons**

Notwithstanding the above, there are some downsides to ADR. For example, if the parties fail to voluntarily honour the agreement or resolution reached in mediation, conciliation or arbitration, the other party will be bound to resort to a court to have it enforced.

Put another way, if a court has to be approached to enforce an agreement reached in mediation, conciliation or arbitration, the party against which enforcement was sought will lose both time and money.

**Comment**

The benefits of ADR are flexibility, reduced costs and the opportunity to actively participate in the resolution of the dispute. However, these benefits depend on the parties voluntarily honouring the commitments adopted by mediation, conciliation or arbitration.

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