

THE PIVOTAL ROLE OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN CORPORATE DISPUTES



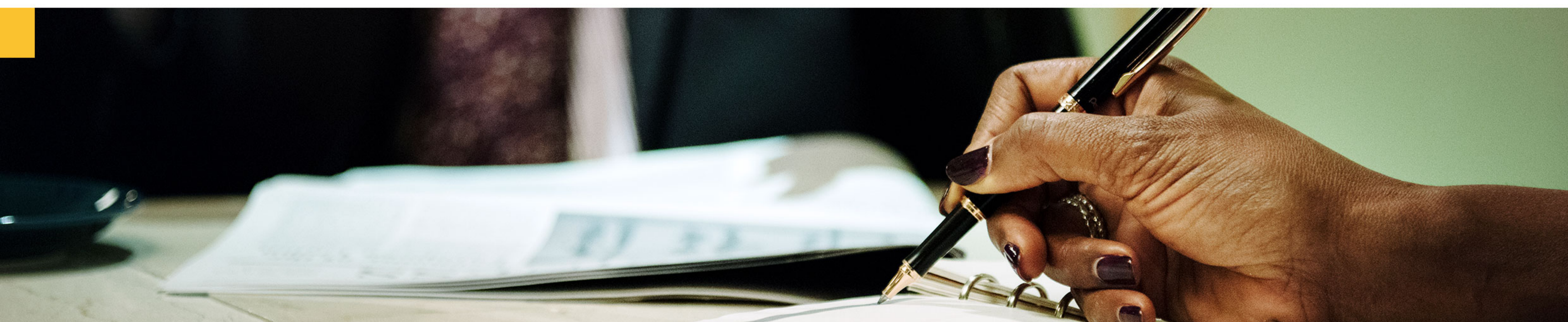
INTRODUCTION

The dynamic world of business is a complex web of relationships, transactions and potential conflicts. In other words, disputes are an inevitable reality in the modern day business landscape. These conflicts may arise between different stakeholders within an organisation or between a company and external parties. These disputes can be complex and involve various legal and commercial issues arising from breach of contract, violation of shareholders' agreements, deadlocks in decision-making, intellectual property conflicts, fraud, misrepresentation, corporate governance issues, and employment related conflicts such as wrongful termination, unpaid benefits, etc.

Traditionally, litigation has been the go-to method for resolving corporate disputes. However, due to its inherent drawbacks such as protracted timelines, exorbitant costs, and adversarial nature which often leave businesses worse off than before, businesses are increasingly turning to Alternative Dispute Resolution (ADR) mechanisms. ADR has become an essential component of modern corporate dispute resolution, offering businesses the opportunity to resolve conflicts more efficiently, cost-effectively, and amicably. This article explores the crucial role of ADR in navigating the complexities of corporate disputes by examining its core principles, advantages, and recommendations for its broader adoption.

PITFALLS OF TRADITIONAL LITIGATION

Litigation, while sometimes necessary, presents significant challenges for businesses embroiled in disputes. Apart from its financial burden, court proceedings are notoriously slow, often dragging on for years, hindering business agility and creating prolonged uncertainty. Perhaps most damaging, the adversarial nature of litigation can irrevocably fracture business relationships, impacting future collaborations and damaging reputations. The public nature of court proceedings can also expose sensitive business information to competitors and the media, leading to reputational harm. No wonder, the courts are beginning to encourage ADR mechanisms. The Lagos State High Court civil procedure Rules mandates all persons to explore ADR before approaching the Court and the Court also refers cases already in its dockets to ADR.



UNDERSTANDING ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative Dispute Resolution (ADR) refers to a range of methods used to resolve disputes outside of the traditional courtroom setting. Its core principles of confidentiality, time efficiency and flexibility, make it well suited for resolving corporate disputes. The most common ADR mechanisms include negotiation, mediation, and arbitration.

Negotiation is the most common form of ADR, where parties—either directly or through legal representatives—engage in discussions to resolve disputes. This method allows disputing parties to craft their own solutions in a way that serves their mutual interests. In corporate settings, negotiation is widely used in contract renegotiations, mergers, acquisitions, and partnership disputes.

Mediation involves a neutral third party (a mediator) who facilitates discussions between disputing parties to help them reach a mutually beneficial resolution. It is especially useful in complex corporate disputes where preserving business relationships is a priority. Mediation fosters collaboration, confidentiality, and creative problem-solving. Unlike arbitration, mediation allows parties to retain full control over the outcome. It is important to add that settlement agreement reached at mediation is binding on the parties.

Arbitration is a more formal ADR process where a neutral arbitrator (or panel of arbitrators) hears both sides and delivers a binding decision, known as an arbitral award. The arbitration process mirrors a court proceeding but is generally quicker, confidential and more flexible. In many jurisdictions an arbitral award has the same enforceability as a court judgment. Arbitration is particularly beneficial in resolving high-stakes corporate disputes, such as those involving intellectual property rights, financial agreements, construction agreements and cross-border transactions.

For parties to explore arbitration as a dispute resolution avenue, there must be an existing arbitration agreement in writing. The arbitration agreement may be an arbitration clause in a contract or in the form of a separate complete agreement.¹ Parties are also enjoined to seek proper legal guidance to ensure their rights and interests are adequately protected and their cases strategically presented before the arbitration tribunal.

¹ Section 2 of the Arbitration and Mediation Act 2023

THE GROWING ADOPTION OF ADR IN CORPORATE DISPUTES

The increasing adoption of ADR in corporate dispute resolution is driven by several key benefits some of which have been highlighted earlier in this article. Unlike litigation, which can drag on for several years due to procedural delays and court backlogs, ADR provides a more efficient resolution mechanism.

ADR processes offer businesses the flexibility to tailor dispute resolution methods to suit their unique needs. Unlike litigation, which follows rigid legal frameworks, ADR allows parties to agree on procedural rules, the selection of arbitrators or mediators, and the venue for resolution. Corporate disputes often involve sensitive financial or strategic information. Unlike court cases, which are public records, ADR proceedings are private. This confidentiality helps businesses protect trade secrets, proprietary information, and corporate reputations from unwanted public exposure.

ADR fosters a collaborative rather than adversarial approach, making it an ideal choice for disputes where maintaining ongoing business relationships is crucial. Mediation emphasizes mutual understanding and cooperation. Additionally, ADR allows parties to select arbitrators or mediators with specialized industry expertise, ensuring that decisions are informed by deep knowledge of sector-specific complexities. This is particularly beneficial in disputes involving intellectual property, financial services, or complex regulatory matters. Ultimately, ADR provides businesses with a cost-effective, efficient, and discreet means of resolving disputes while preserving key relationships and industry-specific interests.

RECOMMENDATIONS FOR ENHANCED ADR ADOPTION

To strengthen the role of ADR in corporate dispute resolution, several steps should be taken. There is a need for creation of more awareness about ADR, particularly in developing economies where litigation is still the default dispute resolution method. Courts must support ADR by upholding arbitration agreements and enforcing arbitral awards. The Lagos and Abuja Multi-Door Courthouses are a welcome development. Judges in other states should receive specialized training to ensure they appreciate the value of ADR in the legal system. To encourage wider use, companies should incorporate ADR clauses in contracts, making it a first recourse before litigation. Governments and regulatory bodies can promote this by advocating for ADR friendly contractual frameworks. Below is a sample arbitration clause which can be adopted and incorporated into contracts:

“Any dispute, controversy, or claim arising out of or relating to this contract, including its formation, interpretation, performance, breach, or termination, shall be resolved by arbitration in accordance with its Arbitration and Mediation Act 2023 and the corresponding rules. The arbitration shall be conducted by a single arbitrator (or a panel of three arbitrators) appointed in accordance with the said rules. The seat of arbitration shall be [City], and the language of arbitration shall be [Language]. The arbitral award shall be final and binding on the parties and may be enforced in any court of competent jurisdiction.”

Additionally, ethical guidelines for arbitrators and mediators should be implemented to ensure transparency and impartiality. ADR agreements voluntarily entered by parties should be made legally binding, ensuring compliance and enhancing the credibility of ADR as a dispute resolution mechanism.

CONCLUSION

ADR plays a crucial tool in resolving corporate disputes, offering efficiency, flexibility, cost savings, confidentiality, and the preservation of business relationships. While challenges exist, strategic improvements such as judicial backing, increased awareness, and stronger ethical standards can enhance its effectiveness. As businesses continue to seek more pragmatic and business-friendly ways to resolve conflicts, ADR is set to play an increasingly vital role in the corporate world. The future of dispute resolution in the corporate world lies in embracing the advantages of ADR, and moving away from the lengthy and costly paradigm of traditional litigation.

Should you require further assistance or clarification on the above, please feel free to contact us at info@famsvillelaw.com

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