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AN OVER VIEW OF ALTERNATE DISPUTE RESOLUTION FROM THE CONTRACTUAL PERSPECTIVE IN EUROPE

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ABSTRACT

The Alternative Dispute Resolution ("ADR") is an alternative conflict settlement strategy. It follows the main objective of solving conflicts between parties stunningly through the help of independent professionals and renowned personalities. Today the role of the ADR is more important, and the number of agreements with ADR is increasing. One of the reasons for this development is that the ADR is usually more efficient and time-saving compared to normal justice delivering procedures. The current paper examines the most popular techniques for the solution of alternative disputes within the EU, through mediation. This paper associates ADR development and the European Law Legislative International Trade Conciliation (2002) along with other Laws and ADR services, such as ICC and different Laws related to the services. It then conjointly makes comparisons between the bound "member state" MS Courts to observe problems concerning ADR. Additionally, it recognizes the ADR in the light of the right to valid remedy (European Union Principles). To administer a deep insight into the subject, the paper describes additionally the ADR origin, its features, and relevance. Hence, this paper will shed light on the issues faced by parties in ADR concerning agreements and shall thereby, provide a solution to overcome the same.

Keywords: Alternate dispute resolution, European union, Contractual perspective

1. INTRODUCTION

Generally, ADR is referred to any means of solving disputes outside the court. This is a method that is adopted to legally solve the trial process through an alternative procedure. This is a collective term by which the party can resolve problems with or without third-party intervention. A dispute when rises between inter parties open an option for the parties to opt for ADR Mechanism. The ADR provides an opportunity to the parties to resolve conflicts in a peaceful way, which is more contractual, and reduces animocity, and thereby, provides justice for each individual. As mentioned above, the ADR is a nature of the contract, which is opted to counter a specific dispute which could be emerged and resolved by the parties through this means. In the more elaborative way, an ADR is a platform through which the third party which is an unprejudiced party called Mediator try to resolve a conflict in a friendly way, with a "win-win" result for the parties involved in a dispute.[2] The present paper will experience the

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[2] *See* Mose, D., H. Kleiner, B. 1999. "The Emergence of Alternative Dispute Resolution in Business Today". Equal Opportunities International (Vol. 18 Num. 5/6). p. 54.

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mediation definition and its specific highlights in more detail. For those of us, who strive to draft an ideal or a subjective viewpoint, contract provisions, drafting ADR clauses could seem to be a difficult undertaking. Hence, this paper goes to provide a better way of figuring out some crucial facts that from the writer's point of view are primary and must be given certain concentration in drafting ADR (mediation) clauses as conflicts are an indispensable element of daily routines. We can face them everywhere; simple domestic change can begin with big fights of corporate interest. Relating to the legal conditions of any agreement, any party may have an improper performance of contractual restrictions, and various interpretations of some other matters can increase conflicts. Finally, the number of these possible foundations is limited thereby, the courts usually take the lengthy procedure for resolving these disputes which are not only expensive but cause harassment to both the disputant parties.[3]

1.1. BACKGROUND OF ADR

The idea of ADR rose in America in the late 1970 and from then on the ADR had become a viable form of the platform which secures cost and time simultaneously.[4] Likewise in just 20 years, this idea came to the EU as the general purpose of the ADR is to solve the conflict in an agreeable way and reduced the costs of a lawsuit to isolate businesses by setting aside the possibility of the judicial decision. By the costs of litigation, we consider time, emotional wear and tears, financial expenses, and relationships between the partners.[5] Generally, the ADR process is an alternative to justice management. Although, the ADR system cannot replace judicial decisions, and any ADR technique application cannot be a barrier to a dispute under court or arbitration.

The establishment of ADR ensures that the business community strongly requests such a procedure. There are many advantages in this regard that the party can get from the ADR, such as flexibility, more focus on the facts of the case than the party's procedures, cost savings, short term dispute resolution, effectiveness, privacy, along with, "keeping sustained" more commercial relationships.[6] The ADR foundation is a contract clause, that is, a contract is a liability the neutral party engaged in the process has control over neither hence the same is impartial.[7] This means that with the help of an impartial third party both the parties agree on a settlement, and in case of failure to comply with any such solution by any party will lead to a specific court or arbitration hearing, but not enforced directly.[8] It is noteworthy that the ADR analyzes the opportunities of the business community, involving their legal councils, to find conflict resolution through commercial settlement, which is near to business activities, Addressing Justice according to the order described by the Law.

1.2. THE IMPORTANT FEATURES OF ADR AND ITS ADVANTAGES

The Confidential manner unless in any other case agreed with the aid of the parties, that aimed at facilitating the settlement of a dispute between the parties (90 % of the disputes taken into consideration under the ADR have been successfully resolved)[9]. We incline to assume that one of the motives for such statistics can be the broad problem definition presumed within the ADR method which is contrary to the management of justice with the narrow problem definition.[10] This means that the events cognizance is now not only established on lawful grounds but at different particularities of the case.

The parties work in a good belief in reaching an agreement with a sovereign agreement and follow their true intent, however, with the help of a goal and expert impartial party, who frequently does no longer assess the dispute. Even though may be asked to present his/her non-binding opinion at the dispute in query; Usually, the process takes itself short duration and consequently settled under reduced cost as compared to the trial.[11]

The parties mostly refer to the interests and needs rather than the rights and responsibilities under ADR are as follows: The agreement is generally under the parties considering a particular dispute and similar disputes can be settled differently with different ADR techniques. If the solution is valid for the parties, its sanity is an optional issue, In other words, parties make their own rule.[12] It is worth mentioning that the compromise between the parties can also be uncertain.

Parties do not limit themselves by the procedural rules as it appears during the litigation process. Therefore, such principle as equality and burden of proof that is inherent to the administration of justice does not need to be followed in the ADR process.[13] In the ADR process parties attempt to resolve a dispute with a "win-win" outcome.

Responsibility for the outcome of the ADR process lies on the parties only because it is the parties who make the final decision on conditions of the settlement agreement, even when the neutral party provides his/her opinion on the issues within the

[3] *Ibid.*

[4] *See* Goldsmith, J., Pointon, G., Ingen-Housz A. 2006. "ADR in Business: Practice and Issues across Countries and Cultures". p. 7.
[5] *Ibid.*

[6] *See* Mose, D., H. Kleiner, B. 1999. "The Emergence of Alternative Dispute Resolution in Business Today". Equal Opportunities International (Vol. 18 Num. 5/6). p. 54.

[7] *See*, for instance, Paulsson, J., Rawding N., Reed, L., Schwartz, E. 1999. "The Freshfields Guide to Arbitration and ADR: Clauses in International Contracts". pp. 118120.

[8] *See* Goldsmith, J., Pointon, G., Ingen-Housz A. "ADR in Business: Practice and Issues Across Countries and Cultures".

[9] *See* Paulsson, J., Rawding N., Reed, L., Schwartz, E. 1999. "The Freshfields Guide to Arbitration and ADR: Clauses in International Contracts". p. 110.
[10] The court applies law to cases with the uniform sercumstances. For this purpose all "nonlegal" factors should be set aside and the narrow problem to be determined.
[11] This statement based on the assumption that the ADR procedure is efficient.
[12] Ibid. p. 316.
[13] Ibid. p. 319. In case of uncertainty whether the particular evidence is not enough, the parties can share the potential risk.

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ADR process.[14] Moreover, a neutral person is not a party to such an agreement. However, if a neutral person is a lawyer then it is presumed that the neutral person will not participate in the dispute settlement that somehow may have a constituent element of a criminal offense or a breach of mandatory public Law obligations. Some scholars suppose that the liability of a neutral party can exist in case of gross negligence.[15]

After understanding ADR's benefits, it still has to be remembered that the ADR mechanisms do not follow the principle - "does fit every possible" and does not apply at all times. This means that in every particular case the potential success of ADR should be determined. In case of drafting a brand new trade agreement to review the following issues or considering the possibility of solving a dispute through the ADR, when ADR clauses are unavailable in a contract.

2. IMPORTANCE OF ADR UNDER EUROPEAN TRADE AGREEMENTS

Whether both parties have a real desire to resolve disputes here are some hidden goals, such as the realization of trouble without the real intention of solving disputes, hate parties, the considerable difference in economic power, etc.[16] Regardless of whether the settlement of the debate is required a point of reference. Such circumstance conceivably can happen when the dispute has the EU measurement and requires the translation of the EU Law that, thus, is ambiguous and confused.[17]

For this situation, certain criterias are met where the court most presumably will allude to the CJEU through preparatory decision strategies[18] keeping in mind the end goal to get the CJEU's explanation of the EU Law. Moreover, here and there need for interval measures can be an explanation behind the case.

> *One may likewise have worries that a simple proposition to depend on the ADR might be considered by the counterparty as proof of the officer's powerless position. For disposal of these worries, an agreement ought to incorporate point by point ADR conditions at the start.*[19]

What type of neutral party will solve problems? Experts in specific areas know that the ADR forms consummately or only one person whom the parties trust.[20]

Generally, any statements, communications, reports given by any party to a neutral party during an ADR procedure are secret. A party should no longer present them in witness in litigation, arbitration, and any different proceedings, unless in any other case supplied through applicable Law of the parties' settlement.[21]

In this light-weight, one might conclude that ADR may be an utterly voluntary procedure that business partners might agree on, and eventually get pleasure from, shall they arrange to resolve a dispute in an associate friendly manner having assessed all professionals and cons of the case at hand. It's vital to know the real goals of a business partner before creating a call in favor of the ADR. The additional detail at this point is discussed under the below subsections.

2.1 THE RIGHT TO VALID REMEDY UNDER THE APPLICATION OF ADR

According to article 6 of ECHR which states, everyone is entitled to a fair and public hearing within a reasonable time appointed by the Law through a reasonable and neutral tribunal. The "Court of Justice of the European Union**"** CJEU declared the right to get an effective remedy as the general principle of EU Law.[22] same provisions also contained in Article 47 of the Charter of Fundamental Rights of the European Union, which says - *"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law".*[23] In this regards one, inter alia, may have issues on whether or not a contractual responsibility to settle viable future disputes through the ADR procedure could by some means affect the right of getting right of entry to the court.

The green paper of the commission has given a positive answer to this question that indicates that the ADR does no longer suspends the limitation period, which in flip can preclude the execution of the proper right to recourse to the courtroom.[24]

However, the CJEU in its judgment in joined cases[25] proclaimed that provisions of the EU Law are to be interpreted as non-precluding legislation of the MS according to which consideration of a case in the court is subject to the disputing parties'

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[14] *See* Goldsmith, J., Pointon, G., Ingen-Housz A. "ADR in Business: Practice and Issues Across Countries and Cultures". p. 15.
[15] Ibid. p. 128.
[16] *See* Paulsson, J., Rawding N., Reed, L., Schwartz, E. "The Freshfields Guide to Arbitration and ADR: Clauses in International Contracts". p. 120.
[17] *See*, for instance, Case 283/81. CILFIT v Ministry of Health. [1982] ECR 341.
[18] TFEU. Art. 267.
[19] *See* Paulsson, J., Rawding N., Reed, L., Schwartz, E. "The Freshfields Guide to Arbitration and ADR: Clauses in International Contracts". p. 122.
[20] *See* Goldsmith, J., Pointon, G., Ingen-Housz A. 2006. "ADR in Business: Practice and Issues Across Countries and Cultures". p. 10.
[21] *See*, for instance, Article 7 of ADR Rules of the International Chamber of Commerce.
[22] *See* Case 222/84 Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary [1986] ECR 1651. para.18-19.
[23] The Charter of Fundamental Rights of the European Union. Art. 47.
[24] *See* Green Paper on Alternative Dispute Resolution in Civil and Commercial Law. para. 62.
[25] *See* Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08. Disputes between end-users and providers of telecommunication services.

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attempt to resolve the dispute out-of-court. In the CJEU case in question, the author can observe the argumentation line similar to the Commissions in the Green Paper.[26] The CJEU determined conditions when domestic Laws imposing on disputing parties obligation to refer to an out-of-court settlement procedure, does not preclude them from having access to the justice, particularly

> *"provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay to bring legal proceedings, that it suspends the period for the time barring of claims and that it does not give rise to costs or gives rise to very low costs for the parties, and only if interim measures are possible in exceptional cases where the urgency of the situation so requires."*

Since in the above-considered judgment the CJEU was tackling the questions in the consumer field in the light of the general principle of the EU Law the right to valid remedies, one may conclude that most probably the CJEU will use the same approach considering the necessity to recourse to the ADR process in commercial disputes. In other words, the CJEU, S position on similar issues regarding trade dispute will be the same principle as mentioned above, subject to the existence of certain criteria.

It is possible that someone is concerned about how the ECRR conditions are related to the commercial contracts that predominantly enter companies that in turn are not subject to human rights. However, commercial contracts are not always entered between the companies. For instance, the mentioned provisions of the ECHR can be actual in protecting the weak party to a transaction in such deals as the trader (individual entrepreneur) versus the giant retailer (company) or service provider (individual entrepreneur) versus the purchasing company or facilities owner (individual) versus lessee (company), etc. In these cases, it is necessary to check the applicable Law provisions concerning criteria mentioned above in the CJEU judgment to make sure that the ADR clause in the particular contract will not be deemed as preventing access to justice of a party to a contract (individual). Using the noted above argumentation we may additionally also give an explanation for a well-known provision of the Model Mediation Agreement drafted with the aid of the CEDR and mentioning that the referral of a dispute beneath the CEDR mediation method does no longer affect any right that exists under Article 6 ECHR.[27] However, turning again to mediation as an indispensable circumstance before having resort to the court, I consider that right here it should be observed a "clash" between the wish of an MS, through domestic Law, to promote the ADR and possibly lower courts dockets through the way of making the ADR as an essential circumstance for feasible recourse to a court, from the one side, and the voluntary nature of the ADR concept, from the different side. In this simple example, we can state the reality that practical application of the ADR,s idea differs from its theoretical basis in such a necessary moment as the indispensable right to select whether or not to have recourse to the ADR or not.

Nevertheless, at the end of the day, perhaps, the inner market dictates such requirements. A nonexpensive, speedy, and advantageous machine of dispute managing is required to enforce the benefits of the internal market.[28]

2.2. ACCEPTANCE OF ADR, S REGULATION IN EU

It is true that the EU positively honored the ADR as the incremental movements of the European Parliament, the Council, the Commission, and the MS have verified this statement.

As the Commission and the Council mentioned in part 2 of the Vienna Action Plan in 1998

> *"Judicial cooperation in civil matters is of fundamental importance to the "area of justice". The rules on conflicts of law or jurisdiction should therefore be amended, particularly as regards contractual and non-contractual obligations, divorce, matrimonial regimes and inheritance, and mediation should be developed …"*[29]

The meeting of the European Council was held in Tampere on 15 and 16, October 1999 over the preparation of the freedom, security, and justice sector. The European Council specifically points out that MS replacement should be made for additional judicial strategies.[30] Following the conferences in question, the Commission in April 2002 adopted the Green Paper on Alternative Dispute Resolution in Civil and Commercial Law. In the Green Paper, the Commission raised many questions on the ADR,s improvement inside the EU concerning the reply through the MS. Going further, after consideration of MS's feedbacks,[31] in July 2004 at the European Commission Justice Directorate conference in Brussels the European Code of Conduct for Mediators (the "Code of Conduct") has been launched. The Code of Conduct aims to apply to civil and commercial disputes. Improvement of mediation quality and trust in mediation is the purpose of the Code of Conduct. It sets out a range of principles that can apply to the mediator's activities voluntarily.

The following step in the ADR,s improvement direction used to be the suggestion of the European Parliament and the Council for a Directive on Certain Aspects of Mediation in Civil and Commercial Matters the ("Proposed Directive") made on 22

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[26] *See* Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services. Art. 34.
[27] Model Mediation Agreement of the Centre for Effective Dispute Resolution. para. 9.
[28] *See* 4 Goldsmith, J., Pointon, G., Ingen-Housz A. 2006. "ADR in Business: Practice and Issues Across Countries and Cultures". p. 329.
[29] *See* Council and Commission Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice. http://europa.eu/legislation_summaries/other/l33080_en.htm
[30] *See* Dragos, Dacian C. *Alternative Dispute Resolution in European Administrative Law*. S.l.: Springer-Verlag Berlin An, 2016.
[31] *See* Summary of the responses to the Green Paper on alternative dispute resolution in civil and commercial law. 13 January 2003. JAI/19/03-EN.

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October 2004. An Explanatory Memorandum to the Proposed Directive (the "Memorandum") underlined that the idea of getting right of entry to justice ought to encompass promoting access to the system of ample dispute decision and not simply get admission to the judicial system.[32] The Proposed Directive supplied two hints that we're going to facilitate in getting the right of entry to dispute resolution. First suggestion related to the establishment of minimum common rules within the EU on several key aspects of civil procedure. Such aspects include suspension of the limitation period, enforcement of settlement agreements, confidentiality. The second suggestion concerned the court's tools indispensable for the active promotion of mediation, however, without making the mediation compulsory or subject to specific sanctions.[33] Moreover, as a legal basis for the adoption of the Proposed Directive, the Memorandum highlighted proper functioning of the internal market, i.e. ensuring (i) access to dispute settlement mechanisms while executing by persons the four freedoms and (ii) the freedom to provide and receive mediation services.[34] Following the presentation by the Commission of the Proposed Directive, the European Parliament and the Council on 21 May 2008 issued the Directive on Certain Aspects of Mediation in Civil and Commercial Matter (the "Mediation Directive"). The Mediation Directive addressed MS except for Denmark. The scope of the Mediation Directive is limited by cross-border disputes in civil and commercial matters. However, mediation instructions say that no one should stop MS from implementation of the internal mediation process.[35] Therefore, considering the above-mentioned aspect, the following conclusion could be drawn: the provisions of the Mediation Directive could be applicable and can be applied for both cross-border and internal disputes and respective mediation processes.

That mediation directive will be without partiality to national legislation, making utilization of mediation mandatory subject on incentives alternately authorizes given that such national regulation does no more stop the parties starting with working out their right from claiming approach of the legal framework. Furthermore, it includes provisions on the enforceability of contract agreement, the confidentiality of the mediation, the influence of the mediation on the limitation period. The transposition period for MS to bring their laws, regulations, and administrative provisions in compliance with the Mediation Directive specified by the period before 21 May 2011. As a result of the implementation of the Mediation Directive, the Commission will, no later than 21 May 2016, prepare and submit to the European Parliament, the Council, and respective Committees, provide a report on the application and impact of the Mediation Directive in MS.[36]

After amendments introduced by the Treaty of Lisbon[37] TFEU, TFEU contains the obligation of the European Parliament and the Council to adopt measures necessary for the proper functioning of the internal market which aimed at ensuring the development of alternative methods of dispute settlement. In other words, the obligation in question is now vested on the treaty level that confirms the great significance that the EU attaches to the development of the ADR. Meanwhile, about initiatives with a global dimension we should always consult with the UNCITRAL Model Law on International Industrial Conciliation (2002) (the "Model Law"). consistent with the Resolution of the General Assembly,[38] the General Assembly acknowledges the worth for international trade of friendly strategies for subsiding industrial disputes, taking under consideration progressively usage in the international and domestic practice of such strategies, as well as, basic cognitive process that the Model Law would contribute to the event of harmonious international economic relations, recommends that every single state provide due thought to the enactment of the Model Law, in sight of the desirability of uniformity of the law of dispute settlement procedures and therefore the specific desires of international industrial conciliation practice.[39]

Apart from the definition of conciliation, the Model Law foresees general provisions on the conduct of conciliation, revelation of knowledge, confidentiality, the acceptability of proof in alternative proceedings, enforceability of settlement agreement. States want to enact the Model Law that might modify some of its provisions to accommodate specific national circumstances. Therefore, one might gain a conclusion that the ADR was with success accepted within the EU and evidenced to be the economical tool resolution of the disputes.

2.3. IMPORTANCE OF ALTERNATIVE DISPUTE RESOLUTION IN A CONTRACT

ADR provision in a contract is a clause according to which the parties agree to try to settle disputes that may arise from the contract. This clause may differ from standard simple, basically recommended by institutions that offer ADR-related services, to detailed clause regulating complex method. Parties are willing to decide on some particular ADR method, e.g. mediation, or

[32] Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council on certain Aspects of mediation in civil and commercial matters. para. 1.1.
[33] Ibid
[34] This includes free movements of (i) goods; (ii) persons; (iii) services; (iv) capital.
[35] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of mediation in Civil and Commercial Metters
[36] Ibid. Art. 11.
[37] *See* Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community. Signed 13 December 2007. Effective from 1 December 2009.
[38] *See* Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/57/562 and Corr.1)] 57/18. Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law.
[39] Dispute settlement with third party assistance. (e.g. mediation/conciliation).

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withdraw such choice for the next stage when a dispute will possibly arise.[40] The ADR's root essence inclines towards a non-binding ("without prejudice") approach aimed to speak about a dispute in a better-off confidential environment. For prosperous mediation, the parties must be able to explore the different solution options and to hearken to the other party's reasoning despite their fundamental stand.[41] One may declare that there is no point to spend time drafting detailed mediation clauses if the parties have the right to "get away" from it almost any time. However, this kind of opinion will be precocious because the ADR clauses put this alternative method of dispute resolution on the parties' schedule and remove fears that parties could have in advancing the ADR as a result of different reasons.[42] The ADR clause needs to point out that the parties will use the ADR as a tool for dispute resolution. Parties to the contract need to estimate and figure out which sort of clause they might prefer in a particular contract. Even even though the standard type of the clause is the best possible answer to the question it is not at all times the right decision. For example, the fast form of the clause may raise questions on the type of ADR, the procedure of nomination of a neutral, date when ADR method will be deemed to begin and complete, etc. There is a high possibility to deal with difficulties in agreeing on discussed spaces, once the parties conflict, which in turn will lead to a loss of the hole value of the ADR clause. At the same time, an actual detailed ADR clause can cause difficulties if parties would want to have a different ADR process than agreed on in the contract.[43]

Talking about detailed ADR clauses, the parties require to take into account the following general matters in the course of the drafting process:[44] (i) should the parties have negotiations earlier than starting the ADR; (ii) parties' responsibility not to initiate any proceedings earlier than the ADR has been tried; (iii) recognition of a point when the ADR deemed to begin; (iv) how the ADR will have an effect on on-going proceedings; (v) process of a neutral(s) appointment and requirements on his/her eligibility; (vi) whether ADR needs to be organized by any association providing ADR-related services; (vii) should the clause fix a well-known ADR form, e.g. mediation, or foresee tiered formation; (viii) should the clause arrange procedural rules comparable to documentation/information exchange, requirements to positions of persons attending meetings and make the decisions;[45] (ix) how the parties should attend meetings with a neutral, separately or jointly; (x) will a neutral party need or allowed to give a non-binding opinion on the most reasonable final results of a case under consideration; (xi) how should the parties enforce their obligations, undertaken under a contract, in the course of the ADR process;[46] (xii) legal responsibility to keep confidential all the information and documentation disclosed by the parties; (xiii) agenda of the ADR process; (xiv) scope of the ADR clause, i.e. what kind of disputes would fall under the clause; [47](xv) managing the ADR costs; (xvi) arbitration clause (if the parties are willing to have it) if the ADR process fails.[48] It is likewise immensely suggested to analyze provisions of the applicable Law ahead of the subject of enforceability of the settlement agreement.[49] Additionally, it is worth observing some subjective factors which could also impress parties' decisions on the usefulness of the ADR. Thus, such dissuasive factors may be a lawyer or external advisor from the counterparty's side whose legal knowledge does not acknowledge the ADR. The appreciable indication of the existence of an ulterior motive could be an irrational explanation of the counterparty's actions as to why it conceded the situation to deteriorate. Under such circumstances, the analysis of the counterparty's previous behavior related to the ADR process (if any) seems favorable.[50] However, the content of the ADR clause simply depends on business relationships and the special circumstances of a transaction.

3. CONCLUSION

It is understood that the formal courts are performing a primary and leading role in delivering justice which often takes a longer time. The courts follow adversary types of procedures to decide the disputes. In this style of procedure, litigation becomes a never-ending exercise. Therefore, Dispute resolution by way of legal proceedings in the courts has become extremely procedural and this has led to unjustifiable delays, high costs, and unfairness in litigation. Besides that, the adversarial nature of litigation is not favorable to the social and business relationships, which had to be preserved. Hence, all the entities are concerned over the issues of delays, and overcrowding in the courts, and high costs of litigation, which the justice system is facing. The adversarial system creates two mutually contradictory, exclusive, unfriendly, competitive, difficult, and uncompromising parties to the

[40] *See* Mackie, K., Miles, D., Marsh, W., Allen, T. 2007. "The ADR Practice Guide: Commercial Dispute Resolution"(Third ed.). p. 151.
[41] Ibid. p. 152.
[42] Depends on a contract clause, e.g. in some contracts such a party would have such right only after commencement (first meeting with a neutral) of ADR procedure
[43] Ibid. 154.
[44] However, in each situation the clause is subject to separate analysis base on type of transaction, the likelihood of dispute, specifics of the parties relationships, etc.
[45] It is recommended to have a person in meetings who has the authority to make decisions that is not subject to any further approvals due to the following facts: (i) authority to make decision is crucial for the ADR as party interested in fast resolvance of a dispute, (ii) awarness of such person (as a rule someone of top management) on the dispute, factual backgrounds of which he/she could misunderstood before, being remoted from the disputing situation. Otherwise, there is always be a risk that a person without authority may agree on something that will not satisfy interests of brass hats.
[46] For instance, obligation of a contractor in the construction contract to continue the work during the mediation, etc
[47] For instance, if dispute requires attendance of a third party which is out of ADR clause
[48] *See* Paulsson, J., Rawding N., Reed, L., Schwartz, E. 1999. "The Freshfields Guide to Arbitration and ADR: Clauses in International Contracts" (Second ed.). pp. 112 – 114.
[49] As folloing from Article 6 of the Mediation Directive, the content of the settlement agreement can be contrary to the law or the law may not provide for enforciability of the settlement agreement at all.
[50] *See* Goldsmith, J., Pointon, G., Ingen-Housz A. 2006. "ADR in Business: Practice and Issues Across Countries and Cultures". pp. 27 – 28.

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litigation. This system does not make a trend of harmony, compromise, and collaboration as the litigation precedes so does the disagreement. At the end of litigation, one party comes out as the winner and the other as a loser. However, Adversarial litigation does not end in an agreement and it creates more hate among the parties that brings more litigation between them or perhaps their successors. On the contrary, Alternative Dispute Resolution is a less painful way of dealing with conflicts that occur within small-scale business partnerships. Conflict is inescapable in terms of owning an institution, particularly when there is a lack of exchange of information or ideas and making plans policy. ADR may also help in maintaining the business perfectly by being fair with the help of (neutral mediator) which is cost-efficient, and stable, therefore, this system is emerging as an important asset in today's world through which a lot of problems could be resolved more easily than the normal court procedure.