

Arbitration

- adversarial spirit/procedure
- likely to disrupt your business relationship
- gets into the machinery of the legal department which controls the process
- all evidentiary material submitted (including second-best materials)
- builds up fixed "positions"
- formal procedure
- joint sessions only
- binding mechanism
- adjudicatory function
- decides
- the rule of law governs
- determines issues that had arisen in the past
- the arbitrator can hardly be "creative"
- goal: to win (the process is "rights driven" and problem-oriented)

ADR (Mediation etc.)

- co-operative procedure/spirit
- not (or less) disruptive
- remains within the active control of the management
- only the best materials; concentration on the essence
- wants a pragmatic, principled and flexible negotiation; aims to bridge the gap
- non legalistic procedure, but carefully structured
- joint sessions and separate caucus sessions
- non-binding mechanism
- advisory function
- solves or recommends
- commercial perspectives prevail
- looks not only backwards, but also (and essentially) to the future
- the mediator can assist the parties "to enlarge the cake," thus to develop a creative and mutually advantageous business solution
- goal: to solve the dispute on an acceptable basis (the process is

"interest driven" and result-oriented

- takes a lot of time
- expensive
- enforceability of the outcome: yes
- speedy
- more cost-effective
- enforceability of the outcome: no