**Alternative Dispute Resolution (ADR)**

It is a name that encapsulates several dispute resolution techniques outside litigation.

Any method of resolving disputes other than by [litigation](http://topics.law.cornell.edu/wex/litigation).

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. Overtime, the process of litigation has become more and more time consuming, expensive and cumbersome and increase in the number of cases in courts have led to congestion and delay in their resolution.

 The commonest methods – inter- alia- are by Negotiation, Mediation, Conciliation, Arbitration and Litigation.

The term “Alternative Dispute Resolution” (ADR), is used generally to describe the methods and procedures used in resolving disputes either as alternatives to the traditional dispute resolution mechanism of the court or in some cases supplementary to such mechanisms.

Arbitration and other forms of Alternative Dispute  Resolution (ADR) is given  constitutional  backing  as  a  means  of  settlement  of  disputes. Specifically,

Section 19(d) of the Constitution of the Federal Republic of Nigeria (CFRN)1999, provides  for  the  settlement  of disputes  by Arbitration, Mediation, Conciliation, Negotiation and Adjudication.

ADR may be conveniently categorized into two groups for the purpose of this lecture namely:  the non-binding ADR and the binding ADR.

The non-binding ADR, inter-alia, includes negotiation, mediation or conciliation and neutral evaluation. These methods are mainly consensual and reconciliatory.

Binding ADR includes arbitration and other adjudicatory ADR methods.

**Forms of Alternative Dispute Resolution**

There are various forms of ADR, including but not limited to, negotiation, mediation, conciliation, and arbitration.

**Negotiation**

Negotiation is a process in which two or more parties hold discussions in an attempt to develop agreement on matters of mutual concern.  According to the Black’s Law Dictionary, negotiation is a consensual bargaining process in which the parties attempt to reach an agreement on a disputed or potentially disputed matter. It usually involves complete autonomy for the parties involved without the intervention of third parties. It is the process of communication used to get that which is in the possession of another who may exercise control as to when or how one can get it.(31)

It is a private process through which disputants can reach a mutual gentlemanly agreement to resolve any conflict between them.

**Mediation**

Mediation is said to be a nonbinding dispute settling mechanism involving a neutral third party who tries to help the disputing parties reach an amicable solution. It is usually resorted to when negotiation fails. Hence, it is a process of assisted negotiation in which a neutral third party helps disputants to resolve their disputes

**Conciliation**

The Black’s Law Dictionarydefines conciliation,

as a process in which a neutral person meets with the parties to a dispute and explores how to help them resolve the dispute. Thus, it is a relatively unstructured method of settling disputes in which a third party facilitates communication between parties in an attempt to help them settle their differences.

Conciliation is a method of settling disputes by consensus rather than by adjudication.  The Arbitration and conciliation Act (CAP 19- LFN 1990) provides for the right to settle disputes by conciliation.  Part II of the Act i.e. Section 37 to 42 and 55 stipulate detailed provisions for conciliation.  Section 37 provides that the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation under the provisions of the Act.  In addition, Section 55 provides that parties to an international commercial agreement may agree in writing that a dispute in relation to the agreement shall be settled by conciliation under the Conciliation Rules set out in the Third Schedule to the Act10.

**Arbitration**

The Black’s Law Dictionary,(42)defines arbitration as a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.

**Applicable law on ADR**

The Arbitration and Conciliation Act (ACA) is the federal procedural law on arbitration in Nigeria. The statute governing arbitration in Nigeria has earlier been stated.  It deals with the appointment of arbitrators, the arbitral procedure and, the award, enforcement or setting aside of the award.

ADVANTAGES OF A. D. R

 It is cheaper;

 There is privacy;

 It promotes reconciliation;

 It saves time and cost; and

 It encourages friendliness.

* Likelihood and speed of settlements
* Flexibility of process
* Parties' control of process
* Parties' choice of forum
* Practical solutions

Flexibility and Simplicity of Procedure

ADR rules and procedures are made to be flexible and simple and easily adaptable to various types of disputes.  For example, in arbitral proceedings where no rules exists to cover a particular situation, the arbitral tribunal may be empowered to conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure fair hearing.

Saving Costs

Apart from simplicity and expeditiousness of the procedure, costs may be saved where the dispute is a technical one and the ADR neutral is a technically qualified person and/or counsel to the parties are specialists.

Quicker Decisions

The ADR tribunal is notably quicker in reaching a decision.  Some arbitration rules provide time limits within which to conclude arbitral proceedings; an example are the rules of the Regional Centre Lagos which prescribes a maximum of six months within which to conclude arbitral proceedings.  This presupposes that arbitral proceedings at the Centre can take one day or more up to a maximum of six months.

Preservation of Good Business and Personal Relations

Where the parties have good business or personal relations which they wish to preserve, it may be advisable to settle their business disputes by ADR which is a more friendly procedure of settling disputes and leaves room for continuation of an unimpaired relationship.

EXCEPTION-­

Areas not subject to ADR/ Limitation of ADR are:

 Declaration of status in matrimonial causes

 Declaration of title to land

 Interpretation of statutes/ documents

 Injunctions

 Grievous criminal offences not compoundable e.g. murder

 Enforcement of fundamental human rights

 Application for judicial review.

 Election petition cases

**Advantages and Disadvantages of Alternative Dispute Resolution over Litigation**

One of the advantages of Alternative Dispute Resolution is that it reduces the volume of cases in the court. In other words, it serves as a means of decongesting the court, providing choice and variety to disputants, thereby enhancing the efficiency of the judicial system.

Another advantage of Alternative Dispute Resolution is that it saves the cost of litigation. The expensive nature of litigation means ADR offers a relatively cheaper alternative to dispute resolution.

Yet another advantage of ADR is the preservation and restoration of relationships. Speedy resolution of dispute is also an advantage of ADR. It is relatively fast in terms of the time it takes to settle disputes, unlike litigation which may take longer time. This removes the formality and complexities associated with litigation.

**DISADVANTAGES OF LITIGATION OVER ADR**

1. Prone to delays

2. Costly(long time spent)

3. Rigid

4. Stressful and tedious

5. Adversarial-­‐ does not foster future relationship

6. No privacy

SeeKano State Urban Development Board V. Fanz Construction Company (1990) 4 NWLR (Pt 142) Pg. 1.

**SAMPLE ARBITRATION CLAUSE**

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the Chartered Institute of Arbitrators. The number of arbitrators shall be [one or three]. The place of arbitration shall be [city, state]. – Scott v Avery clause