

Advantages and Disadvantages of Dispute Resolution Processes

In order to select the most appropriate process, it is important to understand and appreciate the advantages and disadvantages of the various dispute resolution processes.

In the outline of advantages and disadvantages of dispute resolution processes provided below, a simplified spectrum of processes from consensual, informal (negotiation and mediation) to formal, adjudicative (arbitration and trial) is used:

CONSENSUAL PROCESSES – Negotiation and Mediation	
ADVANTAGES	DISADVANTAGES
Speedy and informal resolution of disputes; generally less stressful	Can be used as stalling tactic
Confidentiality and the avoidance of publicity	Parties not compelled to continue negotiations or mediation
May improve communication between parties thereby preserving or enhancing relationships between parties	Do not produce legal precedents
High degree of party control: Parties create own process and craft own agreement	Exclusion of pertinent parties weakens final agreement
Flexibility: resolutions can be tailored to the needs and underlying concerns of the parties and can address legal and non-legal issues as well as providing for remedies unavailable through adjudicative processes	Parties may have limited bargaining authority
Legal and/or other standards of fairness can be used in crafting agreements	Little or no check on power imbalances between the parties
Increased satisfaction and compliance with settlements when parties have directly participated in crafting agreements	Disclosure of information and truthfulness of communications depend on good faith of parties--mediation cannot compel good faith
May assist in clarifying and narrowing issues, and fostering climate of openness, co-operation, and collaboration, even if a settlement is not reached	In negotiation -- lack of neutral may reduce chance of reaching agreement, particularly in complex disputes or those involving multi-parties

Risk-free: communications are without prejudice and if no agreement reached, parties can pursue other options	May not adequately protect parties' legal rights
In mediation – parties may select mediator with substantive knowledge	In mediation -- strong-willed or incompetent mediator can exercise too much control
In mediation -- facilitated discussion useful if negotiations have broken down or if strong emotions present	
Process voluntary (except where mandated by contract or legislation)	
Agreement binds parties	

ADJUDICATIVE PROCESSES – Arbitration and Trial

ARBITRATION

ADVANTAGES	DISADVANTAGES
Parties create own process	Success largely dependent on arbitrator
Arbitrator can be selected on basis of substantive knowledge	Time and cost affected by poor co-operation and poor process design
Confidential proceedings	Right of appeal limited
Formality compels proper behaviour and may minimize bad faith	Confidentiality not suitable for some disputes
Rules of procedure can be tailored to the process	Outcome uncertain in binding arbitration
Less backlog than courts	
Final decision binding or advisory depending on wishes of parties	
Proceedings may be shorter and therefore less expensive	

TRIAL	
ADVANTAGES	DISADVANTAGES
Formal -- less opportunity for abuse of process	Time consuming
Parties compelled to attend	Parties not in control of process or decision -- outcome uncertain
Institutionalized process allows safeguards	Public process
Final decision binding	Onerous evidentiary burden
Legal precedent may be established	Available remedies limited
	Expensive process