



**REGIONAL  
ENGLISH  
LANGUAGE  
OFFICE**



U.S. Embassy Moscow



# U.S. LEGAL WRITING:

## SESSION 4: ADR ENFORCEMENT

U.S. Department of State

Facilitated By:

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Language of Contract  
Drafting: Enforcement  
mechanism of arbitration  
clauses

**16 March 2022**



<https://www.menti.com/pd1fp1avm8>

# Pointers

In drafting a contract, you should always bear these following principles in mind:

- ❑ Be conversant with the parties' wishes.
- ❑ Use a checklist of clauses that relate to the subject of the contract.
- ❑ Be precise in the choice of words.
- ❑ Use several sample contracts to establish the format of the agreement.

“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”

— Sandra Day O'Connor

# What is Dispute Resolution?

Dispute resolution involves bringing two or more discordant parties to clear understanding wherein their differences are ironed out.

It points to every technique applied for settling dispute between entities.

# Dispute Resolution Methods

- Avoidance
- Negotiation
- Early Neutral Expert Evaluation
- Mediation
- Ombudsperson
- Peer Review Panel
- Conciliation
- Med-Arb
- Concilio-Arbitration
- Judicial Dispute Resolution
- Arbitration
- Tribunal
- Litigation

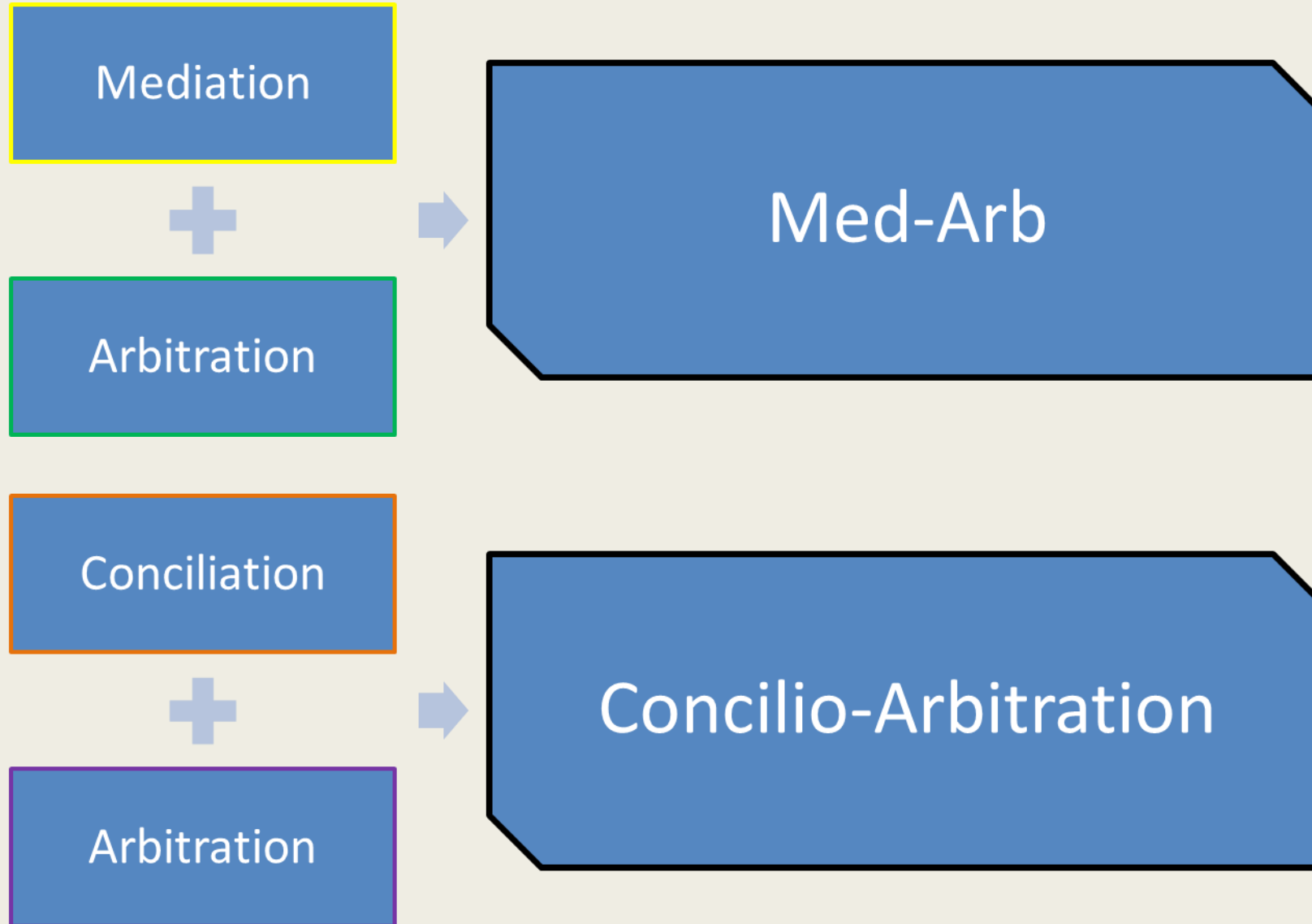
# Advance Choices are Important

Very Important:

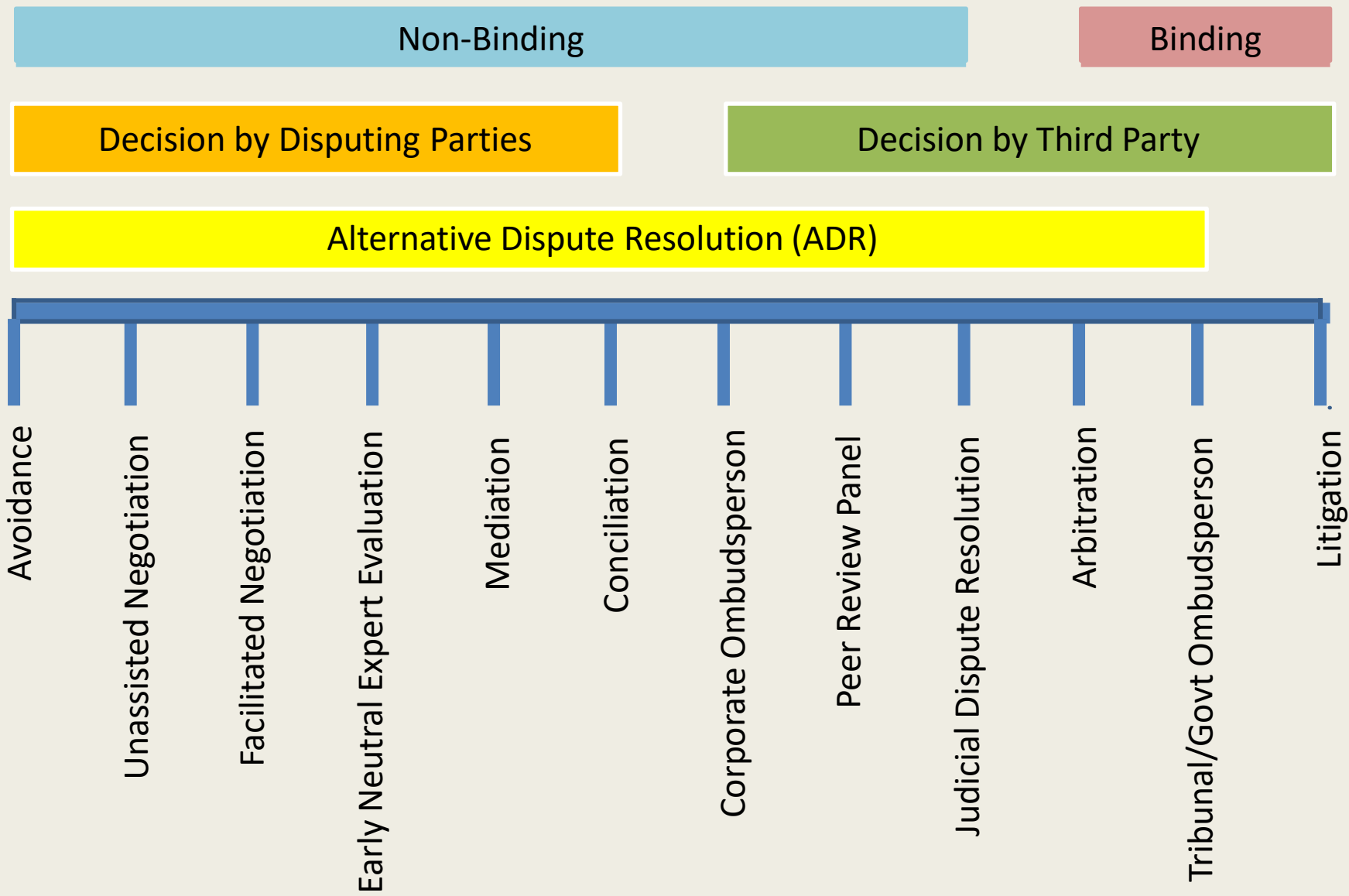
Advance thought should be given to the types of people who would best resolve a dispute likely to arise under the particular contract, and an agreement in which to use that type of person, as a neutral. This can resolve many complaints about the choices parties are expected to make in selecting a person or a panel.



# Hybrid Methods of Dispute Resolution



# Gradation of Dispute Resolution Methods



“An ounce of mediation is worth a pound  
of arbitration and a ton of litigation!”

— *Joseph Grynbaum*

# Alternative Dispute Resolution (ADR)

“Any method of resolving disputes other than by litigation.”

*- Cornell University Law School*

# ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS

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- Is ADR appropriate for Criminal Disputes?

# ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS

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ADR involves settling a civil legal dispute by a method other than a trial decision before a court.

Is ADR appropriate for Criminal Disputes?



# Avoidance

- This is an intentional plan to avoid development of resentment by sorting out critical issues independently, without challenging or unsettling the other party.

# Negotiation

“Negotiation involves two or more parties with competing or conflicting interests or needs, working towards an agreement on how they will cooperate.”

- *Dr Gregory Tillet*

Negotiation is a process of finding point of balance between your objective and that of the other party.

- *Dr Elijah Ezendu*

“In the middle of every difficulty lies opportunity.”

– *Albert Einstein*

# Seven Elements of Negotiation

Interests: What do the parties want?

Options: What are likely areas of agreement?

Alternatives: What if we don't agree?

Legitimacy: How persuasive is each party?

Communication: Are both parties willing to discuss and listen?

Relationship: Are both parties ready to establish operational relationship?

Commitment: What's the structure of commitment from both parties.

# Negotiation Process

- Prepare objectives and strategy
- Discuss and exchange information
- Propose solution
- Bargain and review areas of concession
- Conclude, draft and endorse agreement.

# List Examples of the Following

- Informal Negotiation:.....

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- Formal Negotiation:.....

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# Unassisted Negotiation

Unassisted Negotiation involves the disputing parties systematically reviewing identified challenges and arrive at feasible agreement without a third party.

Partnering is a form of Unassisted Negotiation.

# Negotiation

Negotiation involves two parties discussing and compromising to obtain an agreed solution

Negotiation is usually carried out without legal representatives, but each party can take their own legal representation to assist



Negotiation is not binding



# Facilitated Negotiation

This is a form of negotiation wherein a neutral person would be invited to guide the disputing parties towards reaching an agreement.

Dispute Board is a form of Facilitated Negotiation.

# Early Neutral Expert Evaluation

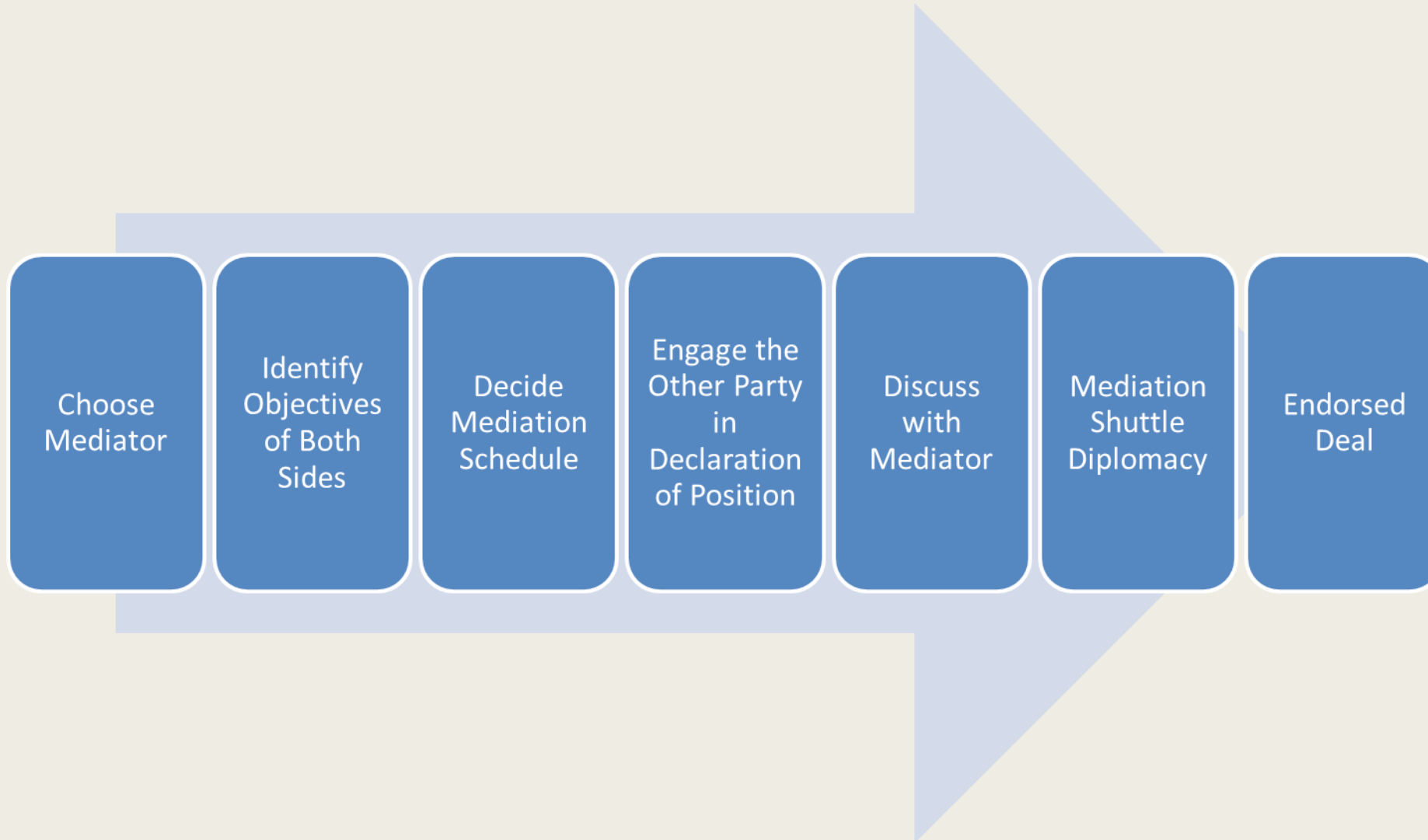
This method of dispute resolution features the use of industry expert or top-practicing professional to function as an independent reviewer and conduct unbiased evaluation of the burning points of matter at stake: Rendering solution orientated counsel, capable of ending that dispute, if accepted by parties concerned.

# Mediation

Mediation is an ADR mechanism in which disputing parties allow an independent third party (mediator) to help them reach a point of settlement.

- Mediation Clause in the contract between the disputing parties should point out terms of mediation including choice of mediator.
- Disputing parties agree to mediate
- Disputing parties select acceptable mediator
- Decisions are made by disputing parties

# 7 Steps to Mediation



# Mediation

Mediation involves an impartial third party who listens and directs discussion but does not suggest outcomes.

Mediation is voluntary

All parties have  
their say



Atmosphere is  
informal

Mediation is not binding

# Disputes unsuitable for mediation

- circumstances where both parties are not willing to attend mediation
- disputes where there is no continuing relationship between the parties
- disputes where there is evidence of a gross imbalance of power
- where there are overwhelming emotions involved
- where there is a history of broken promises

# Conciliation

Conciliation is similar to Mediation except for the active role of the third party (conciliator) in putting forward suggestions of compromise.

It's structured to bring disputing parties to acceptable agreement through concessions.

# How is Conciliation Practiced in Russia?

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# Ombudsperson

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graph TD; A[Ombudsperson] --> B[Corporate Ombudsperson]; A --> C[Government Ombudsperson];
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## Corporate Ombudsperson

- Employee Appointed by Company to Resolve Dispute therein.
- A Person Appointed by Industry Association to Resolve Dispute Between Parties in that Particular Industry.

## Government Ombudsperson

- A Person Appointed by Government to Resolve Dispute Between People and Government.
- A Commission Set Up to Resolve Dispute Between Entities and Government. Example: Public Complaints Commission Comprising Commissioners and Headed by the Chief Commissioner. The Commissioners have Great Latitude of Power to investigate, Inspect and Adjudicate .
- Ombudsperson Appointed by Government is Identified as Defender of Citizens, Ensuring Objectivity and Fairness to Citizens at Large.

# Peer Review Panel

- This is a Dispute Resolution Method in which Peers such as Managers shall be Placed in a Panel to Evaluate and Resolve Matters Pertaining to their Colleagues.

Judicial Dispute Resolution (JDR) is a confidential pre-trial settlement conference led by a Judge. The objective of a JDR is to resolve the dispute so a trial will be either unnecessary, or at most limited to those issues on which the parties do not agree. The parties meet with a Judge or Justice to confidentially discuss the background of the case and what the parties feel is important in the case. The participants will then discuss possible solutions. If no agreement is reached, the Judge or Justice may give a non-binding opinion of what decision they would make if this case and these facts were presented at trial. The Judge or Justice's non-binding opinion may help the parties and their lawyers reach a resolution without having to go to trial. A settlement is only reached if everyone agrees.

*Source: Department of Justice, Government of Canada*

# Arbitration

This is a formal submission of dispute to one or more Arbitrators for a decision to be reached.

- The is a quasi-judicial method
- Arbitration Clause in the contract shows the terms of arbitration between the parties.
- Decisions are voluntary/binding depending on the terms of arbitration as enshrined in the Arbitration Clause.
- Court-Imposed Arbitration is binding.

# Advance Choices are Important

Very Important:

Advance thought should be given to the types of people who would best resolve a dispute likely to arise under the particular contract, and an agreement in which to use that type of person, as a neutral. This can resolve many complaints about the choices parties are expected to make in selecting an Arbitrator or a panel.

Sample clauses specifying arbitrator qualifications, with varying degrees of specificity, follow.

# Advance Choices are Important

Sample clauses specifying arbitrator qualifications, with varying degrees of specificity, follow.

- The sole arbitrator selected shall be (a retired judge from a particular court) (a lawyer with ten years of active practice in a specified area, such as construction) (an accountant) (a licensed engineer trained in the specialty of \_\_\_\_\_ engineering).

# Clauses are Important

Sample clauses specifying arbitrator qualifications, with varying degrees of specificity, follow.

- The panel of arbitrators shall be composed as follows:  
(The Chair shall be an attorney with at least 20 years of active litigation experience or shall be a retired judge from a particular court) (One of the wing arbitrators shall be an expert in an area such as construction) (The Chair must previously have served as Chair or sole arbitrator in at least \_\_\_\_\_ arbitrations where an award was entered following a hearing on the merits).

# Clauses are Important

- The arbitrator shall be (a civil engineer) (a practicing attorney specializing in construction law).
- In the event any claim exceeds \_\_\_\_\_, exclusive of interest and costs, the dispute shall be heard and determined by three arbitrators consisting of persons qualified in (civil engineering) (construction management) (construction law) (mechanical engineering, etc.) or (one contractor, one design professional and one construction attorney)



# Advantages of ADR

Often takes less time than  
court

**generally cheaper than  
litigation**

Less formal than courts

**confidential**, unlike a  
court, which is usually  
open to the public

Held at more suitable venues

**not adversarial**  
and therefore  
both parties can  
come away from  
the process  
feeling as if they  
have won

# Some Professional Arbitration Bodies

- Chartered Institute of Arbitrators (Nigeria)  
<http://www.arbitratorsnigeria.org>
- American Arbitrators Association  
<https://www.aaau.org>
- Chartered Institute of Arbitrators (UK) <http://www.ciarb.org>
- Institute of Arbitrators and Mediators Australia  
<http://www.iama.org.au>
- Indian Institute of Arbitration and Mediation  
<http://www.arbitrationindia.org>
- Association of Arbitrators (Southern Africa)  
<http://www.arbitrators.co.za>
- The Singapore Institute of Arbitrators  
<http://www.siarb.org.sg>

# Arbitration Centers in Other Countries 1

- Abu Dhabi Commercial Conciliation & Arbitration Center
- Australian Centre for International Commercial Arbitration
- Arbitration Centre of Sri Lanka
- Arbitration Center of Mexico (CAM)
- Bangladesh International Arbitration Centre
- Chamber of National and International Arbitration of Milan
- Channel Islands Arbitration Centre
- China Maritime Arbitration Commission
- Court of Arbitration at the Polish Chamber of Commerce
- Dubai International Arbitration Centre
- FICCI Arbitration and Conciliation Tribunal (FACT)
- Foreign Trade Arbitration Court- Yugoslavia (FTAC)
- FIAC Frankfurt International Arbitration Center
- Hong Kong International Arbitration Centre
- Hungarian Chamber of Commerce Court of Arbitration
- International Centre for Dispute Resolution, USA

# Arbitration Centers in Other Countries 2

- International Arbitral Centre of the Austrian Federal Economic Chamber
- International Court of Conciliation and Arbitration of MERCOSUR, Argentina
- International Commercial Arbitration Court of Azerbaijan (ICAC)
- Korean Commercial Arbitration Board
- Kuala Lumpur Regional Centre for Arbitration
- Permanent Arbitration Court of the Mauritius Chamber of Commerce and Industry
- Permanent Court of Arbitration, The Hague
- Qatar International Center for Conciliation and Arbitration
- Regional Centre for Arbitration at Cairo
- Scottish Council for Arbitration (SCA)
- Sharjah International Commercial Arbitration Centre
- Singapore International Arbitration Centre
- Swiss Arbitration Centre
- Tbilisi Arbitration Chamber
- Tokyo Maritime Arbitration Commission of the Japan Shipping Exchange

# Review the Role of Industrial Arbitration Panel in Russia and Its Recent Impact.

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# Litigation

This is a legal process for taking dispute through standard court with the aim of engaging in judicial contest to achieve credible settlement.

# Review the Role of National Industrial Courts in Russia in Resolving Industrial Disputes.

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“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.”

— Abraham Lincoln



# List some problems of Litigation as a Dispute Resolution Method

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“The notion that most people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as the setting to resolve their dispute is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.”

– *Warren E. Burger, Former Chief Justice United States Supreme Court*

Thank you!