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THE ADR BULLETIN

BI-MONTHLY NEWSLETTER OF ADR HOC



ABOUT ADR HOC

Alternate Dispute Resolution mechanisms have gained momentum in the past few decades and are also the need of the hour specially in the times of this pandemic. Hence there is a need to promote ADR mechanisms and also to impart training to the stakeholders as well as law students. With that in mind, ADR HOC was established in August 2020 as a unit of Knowledge Steez EduHub LLP.

The mission of ADR HOC is to promote Alternative Dispute Resolution modes, to undertake research in the field of ADR, to train the stakeholders in the field of ADR as well as training of law students for pursuing career in ADR and organising and promoting various competitions and activities in field of ADR. We are a one stop platform for legal professionals, academicians, law students and anyone who is interested to learn about ADR.

We have organised webinars and panel discussions on crucial topics and many more events are planned for the upcoming months.

WHAT'S INSIDE

In Conversation with:

Mr. Sebastiano Nessi
Mr. Veeraraghvan Inbavijayan

Expert Opinion by:

Mr. Jeevan Bhallav Panda
Mr. Bhaven Shah
Mr. Sameer Shah
Mr. Menahem Kanafi

Articles

Case Studies

Events at ADR HOC

Editor's Pick



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INTERVIEW

Q1. The COVID-19 Pandemic surge resulted in global lock-down and mandatory self-isolation policies; Due to which courts were shut and physical hearings were suspended. How according to you, this unprecedented situation has impacted ADR regime?

A1. Undoubtedly, the COVID-19 pandemic has had an impact on ADR. However, this impact was relatively minor compared to how the COVID-19 pandemic affected other industries. Admittedly, companies are certainly now more focused on rebuilding their business relationship and finding alternative ways to settle their disputes, which in turn may lead to an increase in the demand for mediation or arbitration. At the same time, one may also expect decrease of lower value claims being submitted to ADR mechanisms. In times of financial uncertainty, small and middle-sized companies are indeed likely to favour (out-of-court) settlements.



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Q2. How will this pandemic shape the future of arbitration and their dispute resolution mechanisms?

A2. The COVID-19 pandemic has dramatically accelerated the digitalization of arbitration. Although virtual reality is not a new phenomenon in arbitration, the pandemic has certainly accelerated this process. It has created an unprecedented need for arbitral institutions, arbitrators, mediators and law firms to adapt at very short notice to new and different ways of working. The vast majority of arbitral institutions have come up with a number of innovative responses, such as enabling cases to be filed virtually and where necessary for hearings to be conducted virtually as well. For their part, counsel, arbitrators and other actors of the ADR community have learned quickly to deal with this new paradigm. Will there be however long-term impacts of that new (and remote) digitalized way to handle international arbitration and other ADR cases once this pandemic is over? I have some reservations about that. Virtual reality is not always the best fit for every ADR case.

Q3. In your opinion, how effective is ODR in resolving disputes?

A3. First, I would like to clarify one point, as the term ODR can be somewhat confusing. ODR is generally understood as a way to adjudicate disputes using computer technology only. The UNCITRAL Technical Notes on ODR issued in 2016 defined ODR as a system for dispute resolution through an information technology-based platform and facilitated through the use of electronic communications and other information technology.

This is different from the concept of remote hearings (or some would say virtual hearings) used in the context of an arbitration, where the use of technology is only meant to afford parties, counsel, and the arbitral tribunal to replace the real world with an online space. The procedure, however, is not conducted online. As such, using a platform for virtual hearings does not meet the purpose of ODR. Now, is a virtual hearing (including a hearing on the merits of a case) always "effective" or "appropriate" in any given case? Probably not, and this will depend on many different factors. There is certainly a momentum for virtuality and digitalization, for good reason with the pandemic situation we are facing. But because they are of-the-moment, does not mean that virtual hearings (as appropriate as they are in some cases) are always effective or appropriate for any given case.

Q4. Do you believe the ongoing situation could result in Hybrid hearings in the near future?

A4. In the near future, and as long as the COVID-19 will be around, most certainly.

Q5. What is your advice to the students graduating this year or will the next year, in view of the job-crunch due to pandemic?

A5. First, I would start with a word of pragmatism and positivity. The current pandemic is unlikely to have a major impact on litigation and ADR, more general. This is certainly not very popular to say that, but in times of crisis, litigation and ADR lawyers usually see a boost in their activities.

Second, this crisis might be a good opportunity for students interested into pursuing a career in arbitration or more generally in ADR to increase and deepen their knowledge by enrolling into an LL.M. program, starting a PhD thesis or improving their foreign language skills (the latter being an invaluable asset in international arbitration or ADR). Third, I would encourage them to accept internships, which might well end up into a permanent position once the pandemic is over.

Fourth, and finally, I would tell them to remain confident and patient. A brighter future lies ahead

