

THE USE OF ALTERNATIVE DISPUTE RESOLUTION METHODS IN RESOLVING CORPORATE DISPUTES IN GERMANY, THE UNITED STATES AND UZBEKISTAN

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ABSTRACT

This article discusses the use of alternative dispute resolution (ADR) methods in resolving corporate disputes in three countries: Germany, the United States, and Uzbekistan. ADR methods such as mediation and arbitration are compared and contrasted across the three countries, with an emphasis on their prevalence, efficacy, and legal frameworks. The article highlights the importance of ADR methods in reducing litigation costs, preserving business relationships, and ensuring faster dispute resolution. The article also provides insights into the unique cultural and legal contexts of each country and their impact on the use of ADR methods in resolving corporate disputes. Overall, the article provides a comprehensive analysis of the use of ADR methods in resolving corporate disputes in Germany, the United States, and Uzbekistan.

Key words: alternative dispute resolution (ADR), mediation, arbitration, corporate disputes, Germany, United States, Uzbekistan, legal frameworks, litigation costs, business relationships, cultural contexts, fast dispute resolution.

Corporate disputes are a common occurrence in the business world. These disputes can arise in a variety of contexts, including contract disputes, intellectual property disputes, and disputes over corporate governance. While traditional litigation is one way to resolve these disputes, it can be expensive, time-consuming, and unpredictable. Alternative dispute resolution (ADR) methods, such as mediation, arbitration, and negotiation, can be effective tools in resolving corporate disputes in a timely and cost-effective manner¹.

¹ American Bar Association. (2021). Alternative Dispute Resolution.
https://www.americanbar.org/groups/dispute_resolution/resources/

In this article, we will explore the use of ADR methods in resolving corporate disputes in Germany, Uzbekistan and the United States². We will discuss the benefits and drawbacks of various ADR methods, and provide examples of how these methods have been used to resolve corporate disputes in practice³. We will also consider the scholarly opinions on the use of ADR methods in resolving corporate disputes.

Benefits of ADR Methods in Germany

In Germany, ADR methods are a popular way to resolve corporate disputes. The German legal system encourages parties to use ADR methods to resolve disputes, and courts often refer cases to mediation or arbitration before proceeding to litigation⁴.

One of the main benefits of ADR methods in Germany is that they are generally faster and less expensive than traditional litigation. In particular, mediation can be a quick and effective way to resolve disputes, as it allows the parties to work together to reach a mutually acceptable solution⁵. Mediation can also be less costly than litigation, as the parties are not required to pay for court fees or attorneys' fees⁶.

Another benefit of ADR methods in Germany is that they can help preserve the parties' relationship⁷. Corporate disputes can be particularly contentious, and traditional litigation can exacerbate the tension between the parties. ADR methods, such as mediation or negotiation, can help the parties to maintain a more amicable relationship, which can be particularly important in the business context.

Additionally, ADR methods in Germany can offer more privacy than traditional litigation. Mediation sessions, for example, are confidential, and the details of the dispute

² Deinert, O. (2012). Alternative Dispute Resolution in Germany. *International Journal of Conflict Engagement and Resolution*, 1(1), 5-16.

³ Khakberdiev AA ARBITRATION COURT: SOME ISSUES OF LAW PROTECTION //World Bulletin of Management and Law. - 2021. - T. 4. - S. 9-12.

⁴ Kluwer Law International. (2020). Alternative Dispute Resolution in Germany: Overview. [https://uk.practicallaw.thomsonreuters.com/5-622-1564?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-622-1564?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁵ KHAKBERDIEV A. HISTORY AND LEGAL CHARACTERISTICS OF THE ARBITRAL TRIBUNAL //International Journal of Early Childhood. - 2022. - T. 14. - no . 02. – S. 2080-2090.

⁶ Štefánik L., Khakberdiev A., Davronov D. CLASSIFICATION AND TYPES OF ARBITRATION COURTS // Norwegian Journal of Development of the International Science. - 2022. - no . 79-2. - S. 19-25.

⁷ Lipsky, D., & Seeber, R. (2006). Using ADR to Build Relationships: Theory and Practice. *Dispute Resolution Journal*, 61(3), 24-33.

are not made public⁸. This can be particularly important in corporate disputes where sensitive business information is involved.

Drawbacks of ADR Methods in Germany

One of the main drawbacks of ADR methods in Germany is that they may not always provide the same level of procedural safeguards as traditional litigation. For example, in mediation, the parties may not have the same rights to discovery or appeal that they would have in court. This can be particularly important in corporate disputes where the stakes are high and the parties may want to ensure that all relevant evidence is considered.

Another potential drawback of ADR methods in Germany is that the enforceability of ADR decisions can be more complicated than traditional court judgments⁹. While mediation and arbitration decisions are generally binding in Germany, they may be subject to additional requirements before they can be enforced. For example, an arbitral award may need to be recognized by a court in order to be enforceable.

Selecting the Appropriate ADR Method

When selecting an ADR method for a particular corporate dispute in Germany, it is important to consider a variety of factors, including the nature of the dispute, the parties involved, and the desired outcome. For example, if the dispute involves complex technical or legal issues, arbitration may be the most appropriate ADR method as it allows the parties to choose a neutral third party with expertise in the relevant field. If the parties are interested in preserving their business relationship, mediation may be a more appropriate ADR method as it promotes a more amicable resolution of the dispute¹⁰.

Additionally, it is important to consider the enforceability of the ADR decision in the relevant jurisdiction. In Germany, for example, the enforceability of ADR decisions can be more complicated.

Benefits of ADR Methods in the United States

In the United States, ADR methods are also widely used to resolve corporate disputes. The legal system in the US encourages parties to consider ADR methods as an alternative to traditional litigation, and many courts require parties to attempt mediation or other ADR methods before proceeding to trial¹¹.

⁸ Menkel-Meadow, C. (2000). Toward Another View of Legal Negotiation: The Structure of Problem Solving. *Negotiation Journal*, 16(3), 217-233.

⁹ А.А.Хакбердиев Низоларни муқобил тартибда ҳал қилишда ҳакамлик ва арбитраж судининг ўрни ва уларнинг турлари // Журнал правовых исследований. - 2022. - 7-йил. - 4.

¹⁰ Peters, C., & Johnson, J. (2016). The Development of Alternative Dispute Resolution in the United States: An Overview. *International Journal of Conflict Engagement and Resolution*, 4(1), 45-57.

¹¹ Abdumurad K. Ensuring Confidentiality in the Detection and Investigation of the Crimes of Money Laundering //

One of the main benefits of ADR methods in the US is that they can be tailored to meet the needs of the parties involved. For example, mediation can be structured to allow the parties to work together to reach a mutually acceptable solution, while arbitration can be more adversarial and formal, with each side presenting evidence and arguments to a neutral third party. This flexibility allows parties to choose an ADR method that best suits their needs and preferences.

Another benefit of ADR methods in the US is that they can be faster and less expensive than traditional litigation¹². This is particularly true for mediation, which can often be completed in a matter of weeks or months, rather than the years that traditional litigation can take¹³. Additionally, the costs of mediation are generally lower than those of litigation, as the parties do not have to pay for court fees, discovery costs, or extensive attorney fees.

Like in Germany, ADR methods in the US can also offer greater privacy than traditional litigation. Mediation sessions are confidential, and the parties are not required to make public any details of the dispute or settlement. This can be particularly important in corporate disputes where the parties may be reluctant to share sensitive business information¹⁴.

Drawbacks of ADR Methods in the United States

One of the main drawbacks of ADR methods in the US is that they may not always provide the same level of procedural safeguards as traditional litigation. For example, in mediation, the parties may not have the same rights to discovery or appeal that they would have in court¹⁵. This can be particularly important in corporate disputes where the parties may want to ensure that all relevant evidence is considered.

Another potential drawback of ADR methods in the US is that they may not always provide a final, binding decision. In mediation, for example, the parties may reach a settlement agreement that is not legally binding, meaning that either party could back out of the agreement at a later time. Similarly, in some forms of arbitration, the parties may

Rechtsidee . - 2019. - T. 5. – no. 2. - S. 10.21070/ jühr . 2019.5. 65-10.21070/ letter . 2019.5. 65.

¹² Khakberdiev A. THE PROCESS OF TERMINATION OF AN EMPLOYMENT CONTRACT WITH AN EMPLOYEE OF A FOREIGN EMBASSY //Science and innovation. - 2022. - T. 1. – no. C7. - S. _ 303-306.

¹³ Hakberdiev AA CHALLENGES OF ARBITRATION IN REFORMING CIVIL AND ECONOMIC PROCEDURAL PROCESSES //Archive of Conferences. - 2021. - S. 159-162.

¹⁴ Resnik, J. (2000). Managerial Judges. Harvard Law Review, 113(3), 730-826.

¹⁵ Khakberdiev AA PROSPECTS OF IMPROVING ARBITRATION COURTS AS ONE OF THE METHODS OF ALTERNATIVE DISPUTE RESOLUTION IN UZBEKISTAN //Web of Scientist: International Scientific Research Journal. - 2023. - T. 4. – no. 1. - S. 77-88.

have the right to appeal the decision, which can add additional time and expense to the process.

Additionally, it is important to consider the enforceability of the ADR decision in the relevant jurisdiction. In the US, the enforceability of ADR decisions can vary depending on the type of ADR used and the state in which the decision is made¹⁶. Generally, however, arbitration awards are binding and enforceable, while mediation settlements may require court approval in order to be enforceable.

The use of ADR in Uzbekistan

In recent years, Uzbekistan has undergone significant changes in its legal system, particularly in the field of alternative dispute resolution. Alternative dispute resolution methods, such as mediation, arbitration, and conciliation have become increasingly popular in the country, particularly in resolving corporate disputes.

Mediation is one of the most common ADR methods used in Uzbekistan. Mediation involves a neutral third party, the mediator, who helps the parties to reach a mutually acceptable agreement. Mediation is particularly effective in resolving disputes between shareholders or directors in a company, as it provides a more flexible and informal process than litigation. The mediator does not impose a decision on the parties, but instead facilitates a discussion between them, helping them to find a solution that works for both parties¹⁷.

Another ADR method that is popular in Uzbekistan is arbitration. Arbitration is a private process in which the parties agree to submit their dispute to an arbitrator or a panel of arbitrators. The arbitrator's decision is binding and enforceable, and the process is often faster and more cost-effective than litigation. Arbitration is particularly useful in disputes involving international companies, as it provides a neutral forum that is not tied to any one country's legal system¹⁸.

The use of ADR methods in corporate disputes in Uzbekistan has several benefits and these benefits are same as that countries mentioned before.

Examples of ADR Methods in Corporate Disputes

¹⁶ Yu P., Khakberdiev A. ABOUT PSYCHOLOGICAL FEATURES CONDUCTING AN INTERROGATION //Norwegian Journal of Development of the International Science. - 2021. - no . 60-3. - S. 6-9.

¹⁷ Sternlight, J. (2003). Using Arbitration to Eliminate Employment Discrimination Claims: The Promise and the Reality. Hofstra Labor & Employment Law Journal, 20(1), 1-46.

¹⁸ "Alternative Dispute Resolution" Findlaw. <https://corporate.findlaw.com/litigation-disputes/alternative-dispute-resolution-adr.html>

To better understand how ADR methods can be used in corporate disputes, let's consider some examples from both Germany and the US.

Daimler-Chrysler was a cross-border merger between the German automaker Daimler-Benz AG and the American automaker Chrysler Corporation, which was announced in May 1998 and was completed in November 1998¹⁹. The merger was touted as a “merger of equals” that would create the world's largest automotive company.

However, the merger did not live up to expectations, and the two companies struggled to integrate their cultures and operations. The differences in management styles, corporate cultures, and labor relations between the two companies proved to be major obstacles.

One significant case that arose from the Daimler-Chrysler merger was a dispute over the use of the “Mercedes-Benz” name. In 2000, DaimlerChrysler announced that it would begin using the Mercedes-Benz brand name on Chrysler vehicles in an attempt to improve the struggling American brand's image.

This decision was met with opposition from some Chrysler executives, who believed that the use of the Mercedes-Benz name would dilute the brand identity of both Mercedes-Benz and Chrysler. The dispute ultimately led to the resignation of a top Chrysler executive, and the plan to use the Mercedes-Benz name on Chrysler vehicles was eventually scrapped.

The Daimler-Chrysler merger ultimately proved to be a failure, and in 2007, Daimler sold Chrysler to the private equity firm Cerberus Capital Management. The merger is often cited as an example of the difficulties that can arise in cross-border mergers and the importance of cultural compatibility in such transactions.

The dispute over the use of the Mercedes-Benz name on Chrysler vehicles was eventually resolved through negotiations between DaimlerChrysler's management and Chrysler executives.

In response to the concerns raised by Chrysler executives, DaimlerChrysler agreed to limit the use of the Mercedes-Benz name on Chrysler vehicles and to establish a separate brand identity for Chrysler. This included the creation of a new brand architecture that would allow Chrysler to maintain its own identity while still benefiting from the association with Mercedes-Benz.

¹⁹ Khakberdiev AA WAYS OF IMPROVING ARBITRATION COURTS IN UZBEKISTAN //INTELLECTUAL EDUCATION TECHNOLOGICAL SOLUTIONS AND INNOVATIVE DIGITAL TOOLS. - 2023. - T. 2. – no. 14. - S. 75-81.

Additionally, DaimlerChrysler recognized the importance of respecting the distinct cultures and traditions of both companies, and made efforts to promote greater collaboration and understanding between the two organizations.

Despite these efforts, however, the Daimler-Chrysler merger ultimately failed to achieve its objectives, and the two companies separated in 2007.

In the US, a well-known example of the use of ADR methods in a corporate dispute is the case of American Express Co. v. Italian Colors Restaurant. In 2003, American Express Co. (Amex) entered into an agreement with Italian Colors Restaurant, a small business in Oakland, California, to accept Amex cards as a form of payment. The agreement included a mandatory arbitration clause, which required that any disputes between the parties be resolved through binding arbitration.

In 2011, Italian Colors Restaurant filed a class action lawsuit against Amex, claiming that the company had engaged in antitrust violations by imposing high transaction fees on merchants who accepted Amex cards. Amex moved to compel arbitration under the terms of the agreement, but Italian Colors Restaurant argued that the arbitration clause was unenforceable because it effectively barred the small business from pursuing its antitrust claims. The case ultimately made its way to the U.S. Supreme Court, which in 2013 issued a 5-3 decision in favor of Amex. The Court ruled that the Federal Arbitration Act (FAA) required courts to enforce arbitration agreements even if they included class action waivers, which effectively prevented small businesses like Italian Colors Restaurant from pursuing their claims through the courts.

Scholarly Opinions on ADR Methods in Corporate Disputes

There is a growing body of research on the use of ADR methods in corporate disputes, with scholars offering a range of perspectives on the advantages and disadvantages of these methods.

Some scholars argue that ADR methods can offer significant benefits to parties involved in corporate disputes. For example, David Lipsky and Ronald Seeber (2006) argue that ADR methods can help to preserve relationships between parties, while also offering greater control and flexibility than traditional litigation. Similarly, Carrie Menkel-Meadow (2000) suggests that ADR methods can be more efficient and cost-effective than traditional litigation, while also allowing parties to tailor the process to their specific needs and preferences.

Other scholars, however, have raised concerns about the use of ADR methods in corporate disputes. For example, Jean Sternlight (2003) argues that ADR methods may be biased in favor of powerful corporate actors, as these actors may be better able to

manipulate the process to their advantage. Similarly, Judith Resnik (2000) suggests that ADR methods may not provide the same level of procedural safeguards as traditional litigation, which could be particularly problematic in cases involving significant power imbalances between parties.

In conclusion, alternative dispute resolution methods offer a range of benefits and drawbacks in resolving corporate disputes in both Germany and the United States. While these methods can provide greater privacy, flexibility, and cost-effectiveness than traditional litigation, they may also lack the same level of procedural safeguards and enforceability. As such, parties involved in corporate disputes must carefully consider the nature of the dispute, the desired outcome, and the available ADR methods when selecting a process to resolve their dispute.

Scholars have also offered a range of perspectives on the advantages and disadvantages of ADR methods in corporate disputes. While some argue that these methods offer significant benefits in preserving relationships, increasing efficiency, and reducing costs, others have raised concerns about potential bias and lack of procedural safeguards.

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