

Which method of dispute resolution to choose for your dispute?

As lawyers we like defending our clients before Courts or a panel of arbitrators.

However, we are aware that these methods of dispute resolution are not always the most appropriate and efficient, at least not in first instance. We therefore advise our clients to consider negotiations and mediate if possible. This is also in line with the current intentions of the Belgian legislator.

In order to help you choose the most appropriate method, we provide you with a schematic comparison of these methods (advantages and disadvantages) at the back of this sheet, after a brief description of the four methods of dispute resolution.

- **Negotiations** allow the parties - without the intervention of third parties, with the possible exception of their respective lawyers - to find an amicable solution to their dispute in a settlement agreement.
- **Mediation** is a structured and confidential process of voluntary consultation between parties in conflict, with the intervention of an independent, neutral and impartial third party that facilitates communication and invites the parties to find a solution to their dispute themselves (see our mediation fact sheet). If successful, it also leads to a settlement agreement or a consent judgement.
- **Legal proceedings** are initiated by one of the parties involved in the dispute. The parties have control over the procedure and may, if necessary, have it suspended. After the exchange of written and oral pleadings, the judge acts as a third party decision-maker and passes judgement, against which, in principle, an appeal can be lodged.
- **Arbitration** is an alternative and private method of dispute resolution in which an odd number of specialized and impartial arbitrators make a final, binding and confidential decision. The arbitrator acts as a third party decision-maker. There are different kinds of arbitration, which allow notably to choose the place, the language and the applicable law (see our arbitration fact sheet).

Ideally, it is important in the business world to consider the preferred method of dispute resolution already during contract negotiations, and not only when a dispute arises (concerning contractual disputes). As such, it is clearly much easier to start mediation or arbitration or to institute court proceedings if the contract provides for this. Or, as the slogan of the Bar Association puts it, « a lawyer better sooner rather than later ».

WE REMAIN AT YOUR DISPOSAL FOR ANY QUESTIONS:



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CHARACTERISTICS	LEGAL PROCEEDINGS	ARBITRATION	MEDIATION	NEGOTIATION
Enforceable title	+ In principle, a judicial decision provides an enforceable title	+ An arbitration award provides in principle an enforceable title	+- If approved by a judge, a mediation agreement can provide an enforceable title	- A settlement agreement does not provide an enforceable title
Confidentiality	- No, the hearings are in principle public. Journalists may be present	+ In principle, yes	+ Yes, unless approval by a judge. Possibility to prohibit the use of proceeded documents	+- Yes, provided the parties' lawyers are present during the negotiations
Duration	- Procedures are lengthy (1-1.5 years in first instance), except in summary proceedings. Appeal is possible	+ Faster than court proceedings. In principle, no appeal	+ In principle, this allows for a quick issue of the dispute	+ In principle, this allows for a quick issue of the dispute
Costs	+	- Higher costs (arbitrators' fees to be born)	+	+
Influence on the relationship between parties	- End of the relationship	- End of the relationship	+ Continuation of relationship remains possible. Invitation to find a mutually "acceptable" solution	+ Continuation of relationship remains possible. Parties to find a mutually "acceptable" solution
Specialisation	- Judges are not always familiar with the subject matter / sector	+ Arbitrators are being in principle chosen based on their legal / technical qualifications and expertise	+ The selected mediator must adhere to certain qualifications	+ Parties are best suited as regards their issues
Language and exhibits	- Language prescribed by law (NL, FR or GER, no EN so far). Possible obligation to translate the exhibits	+ At the parties' or arbitrators' discretion	+ At the parties' or mediator's discretion	+ At the parties' discretion

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