

Alternate Dispute Resolution in China: Research on ADR for the Construction of Harmonious Arbitration System in China¹

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ABSTRACT

China is in a period of social transition. The litigation cases encountered in the process of rule by law have exponentially increased. Problems such as excessive pressure on judicial resources and exorbitant judicial costs have the same background as the ADR system in the West. Therefore, China can try to cite this method to see that fit the purpose of the construction of harmonious arbitration system or not. This article mainly through Multi-Attribute Decision Analysis and Compensatory Decision Rules means to compare three feasible alternatives to resolve disputes in China. According to the final data, it shows that mediation is a more appropriate alternative. The ADR is in line with China's national conditions. Also, the rapid development and achievement of ADR have also had a significant impact on China's legal concept.

Key words: Alternate dispute resolution (ADR), Innovation research, Advantages, Arbitration System, Development, Mediation, Litigation, Arbitration

INTRODUCTION

The Alternate dispute resolution originated in the 1960s in the United States, because of the high cost and bureaucratic procedure, the parties and the lawyers realised that legal disputes through litigation became increasingly expensive, time-consuming and uncritical. At the same time, the courts were faced with "litigation explosion", but also human and financial difficulties were unsustainable. People were looking for a simple, cheaper way to get the things done, so the ADR became a natural choice.

The ADR is a dispute resolution process and technique that allows the two parties in dispute to reach a consensus without litigation. It's a collective term that includes many ways in which both parties can settle disputes, with or without the help of a third party.

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With the development of socio-economic globalisation, due to the differences in political, economic, cultural and legal systems in different countries, parties are increasingly turning to ADR for non-litigation proceedings in case of disputes, which made the ADR flourish in the 1970s. The success of the ADR was recognised and supported by the United States federal government in 1930.

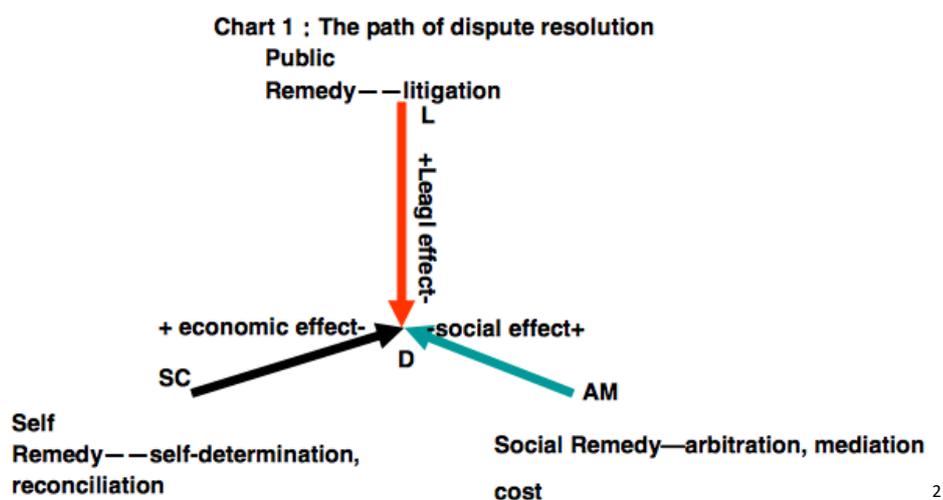
The social benefits of ADR in the United States have led to the development of global ADR, as well as in China, who have so accepted this new method. ADR is an open and developing system that has high adaptability to the handling of new types of civil disputes. However, since China is different from Western capitalist countries and China is a socialist country, as we know, the different systems will produce various problems and different solutions, it's important to see the arbitration system in China to go in this analysis.

To summarise, what this research has been designed to address are the following questions:

1. Which dispute resolutions fit the purpose of ADR?
2. Does this method accord with China's harmonious arbitration system?

METHODOLOGY

There are three paths of social dispute resolution in China. The first one is self-remedy, it refers to the situation where people solve disputes by themselves, and there is no third party to assist or preside over dispute resolution procedures. The second one is social remedy, which relies on the social power and based on both parties' agreement. The last one is public remedy, it means to solve the dispute through the national power. The three paths to solve disputes from different angles and find three ways to resolve the disputes, is shown in Chart 1 as follows:



² Wei, Y. (n.d.). *New Development of ADR in China* (pp. 2-3, Rep.).

In China, the theory of ADR is entirely different from the ADR theory under the Western legal system. Although there is currently a similar independent ADR agency in China, the general idea of ADR under China's legal system is incorporated into the hearing of the judicial or arbitration proceedings.

2.1 Feasible alternatives

With the development of economy and technology in China, at the same time, the number of civil and commercial disputes in China is also rapidly growing. Here are three alternative methods for domestic and foreign investors to resolve their disputes in China.

1. Litigation
2. Arbitration
3. Mediation

2.2 Development of the outcomes

As the alternatives are selected, we will develop a Multi-Attribute Decision Analysis to prove which one is less efficient. Before entering the comparison, let's take a look at the meaning of each option.

Litigation

The judgments made by the people's court by the law have the force of law and must be enforced by the parties involved. However, litigation again lacks the autonomy and flexibility of arbitration.

Arbitration

In practice, arbitration, as an alternative to litigation, plays an essential role in the field of dispute resolution. They tend to be more neutral, agile and efficient than litigation. Therefore, it is especially favoured by parties in the commercial arena.

Mediation

The conciliation statement has the same enforcement effect as the verdict. If the parties fail to comply with the conciliation statement, the plaintiff may directly apply for compulsory execution according to the conciliation statement.

There is no appellate procedure as soon as the mediation agreement reached by the parties enters into force immediately.

Mediation can avoid the intensification of conflicts between the two parties.

2.3 Selection of a criterion

To better compare feasible alternatives, I intend to use time, money, level of stress, the complexity of procedures and rational results as my attributes to compare the three parties.

Table 1

Selection attributes	Litigation	Arbitration	Mediation
Minimize time	1	2	2
Minimize cost	1	2	3
Less Stress	1	3	2
More Simplicity	2	2	2
Rational result	2	2	2
Average	1.4	2.2	2.2

- 0 = Highly unlikely to satisfy goals and objectives
- 1 = Unlikely to satisfy goals and objectives
- 2 = Likely to satisfy goals and objectives
- 3 = Highly likely to satisfy goals and objectives

According to Multi-Attribute Decision Analysis, we can find out the litigation is less efficient, and the arbitration is the same level as the mediation.

FINDINGS

To choosing our better and best alternative, we will focus on comparing the alternatives of arbitration and mediation by using the criteria of time, cost. By using the data from Table 1, let's consider the time is as valuable as cost. We will use the Compensatory Decision Rules to identify which is our best alternative.

3.1 Comparison of the alternatives

Time

	Litigation	Arbitration	Mediation	Geometric mean	Weight
Litigation	1	1/2	1/2	0.63	0.2
Arbitration	2	1	1	1.26	0.4
Mediation	2	1	1	1.26	0.4
Total				3.15	

Cost

	Litigation	Arbitration	Mediation	Geometric mean	Weight
Litigation	1	1/2	1/3	0.55	0.17
Arbitration	2	1	2/3	1.10	0.33
Mediation	3	3/2	1	1.65	0.5
Total				3.30	

Composite scores

	Time (0.5)	Cost (0.5)	Composite scores
Litigation	0.2	0.17	0.37
Arbitration	0.4	0.33	0.73
Mediation	0.4	0.5	0.9

3.2 Selection of the preferred alternative

By comparison, we can see that the three parties have some discrepancies regarding time and cost. So what does each of them represent? We need to understand their definition.

Litigation

It is a kind of legal action divided into two categories: civil and criminal. The former plaintiff is the victim and has resorted to law because of unresolved disputes. Public authorities prosecute the latter concerning criminal offences and prosecutors (prosecutors).

Arbitration

Arbitration is one of the alternative ways of dispute resolution that the parties may wish to choose. The parties select and authorise non-judicial bodies or individuals to make binding judgments on the disputes they submit.

Mediation

The mediation process is conducted by accredited mediators who act as neutrals to help both parties to the dispute understand the focus of the discussion, discuss the interests and needs of both parties, seek solutions acceptable to both parties, and assist in the drafting of the agreement. If both parties reach an agreement, they sign the deal, and the agreement is legally binding. Both parties voluntarily participate in the process of mediation, and the process is entirely confidential.

As we can see the result from the above data, time and cost are the most important criteria to consider the feasible alternative to ADR. According to the final result in a composite score, we will choose the mediation as the best possible alternative to the theme of this paper.

3.3 Performance monitoring

To track the feasibility of this program, we will continue to compare the consumption of time and cost with the previous plan by using the Pareto Analysis for example.

Before using this advice, we need to set a quantitative measure, such as time, and then compare the result of using this information to the previous litigation. Whether the result was

shortened or not impressed the complainant's expectations. If not, you need further research and analysis.

The second method of supervision compares costs. The complainant should spend less on the budget to meet the change request.

CONCLUSIONS

1. Which dispute resolutions more fits the purpose of ADR?

Mediation is a form of alternative dispute resolution in which a neutral third person helps the parties reach a voluntary resolution of a dispute. Unlike Western ADR, ADR trials in China tend to be conducted by the same court or tribunal during or after the hearing, rather than by an independent body before the hearing. This type of mediation is less adversarial and helps maintain the commercial relationship between the parties to the dispute. Therefore, the main difference between China's ADRs and Western ADRs lies naturally in the extensive application of the mediation principle in the entire process of dispute resolution.

2. Does this method accord with China's harmonious arbitration system?

The traditional non-litigation dispute resolution mechanism has a long history in China, excellent mass foundation and has become the primary form of dispute resolution. Non-litigation to solve the institutionalisation of civil disputes and further development is to reduce the administrative burden is an efficient way. China is a human-oriented country and we prefer a harmonious solution and in various ways embody the Confucian culture in which "harmony is highly valued".

FOLLOW ON RESEARCH

After research, we can find that there are many ways to resolve disputes in China. Since China is now carrying out structural reforms, the provisions are not quite complete and there is still much room for improvement. We will continue to observe the development of ADR in China and see whether it can make better the judicial system in China.

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