



# ALTERNATIVE DISPUTE RESOLUTION

As part of our special report on the issues surrounding alternative dispute resolution and the trends that have been noticed over recent years, *Lawyer Monthly* speaks to Mr. Menelaos Kyprianou from Michael Kyprianou & Co. LLC. This firm is one of the largest in Cyprus in terms of size and maintains six fully fledged offices - three in Cyprus (Nicosia, Limassol and Paphos), two in Greece (Athens and Salonica) and one in Malta (Birkinhara). Michael Kyprianou & Co. LLC provides services in a wide range of areas, and Menelaos personally deals in dispute resolution in the field of commercial and corporate law.

**Reports show a widely-held belief that mediation is set to grow significantly, as companies realise its potential for a quick and cost-effective resolution of disputes. What would you say are the main benefits for companies of choosing this method of ADR?**

Mediation is a low cost and flexible procedure. It is also a confidential procedure which allows parties the opportunity to resolve their differences in a manner that will not attract negative publicity. Another advantage of mediation is that it leads to an outcome without delay, whether this outcome is reaching an agreement to settle the dispute or not reaching an agreement.

However, the benefit of mediation that in my mind truly sets it apart from other forms of ADR is the balance that it strikes between attempting to resolve a dispute, on the one hand, and respecting the parties' previous commercial relationship and attempting to leave it intact on the other. Mediation involves a third person helping the parties find their common ground and working towards resolving their dispute by agreement. It is in this respect unlike adversarial methods of resolving disputes which may often deal the final blow to the parties' relationship.

Also, because it involves resolving disputes by agreement, such agreements are often easier to enforce than Court judgments or arbitral awards.

**Do you agree with reports that mediation will grow in popularity over the next year or so?**

I agree that mediation is becoming increasingly popular as a form of ADR and I believe that this trend will continue. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters has arguably given a boost to mediation. At least with respect to Cyprus this directive has been implemented (Law 159(I)/2012), a register of mediators has been created, and a number of mediation courses are now taking place on a frequent basis.

At the same time it is to be expected that parties to a dispute will increasingly turn to ADR in view of the large caseload which is overwhelming the Courts and causing substantial delays to the administration of justice. Parties are turning to ADR as a faster and more cost-effective way of resolving their disputes. A formidable example of this are the debt restructuring mediations taking place in Cyprus between consumers and the banks. These mediations are taking place with the aid of a financial ombudsman that has been appointed pursuant to the provisions of Law 84(I)/2010.

*“At the very least mediation can act as a filtering process for litigation or arbitration, leaving only those disputes where there is no genuine willingness of the parties to resolve them amicably to be decided by a Court or tribunal.”*

**Do certain methods of dispute resolution (arbitration, litigation, mediation) suit certain types of dispute more than others? What types of dispute are more suitable to be resolved via mediation? Why?**

Mediation is not always the most appropriate method of resolving a dispute. It is not for example appropriate where the parties are unwilling to cooperate and find common ground between them. It is also potentially not appropriate in very complex cases where the parties themselves find it difficult to grasp all the issues. In such cases having a person decide the dispute for the parties (i.e. litigation or arbitration) will be more suitable.

Mediation is arguably best suited to those cases where the parties genuinely wish to avoid prolonging the dispute, an escalation of costs, and where they wish to preserve their relationship.

At the very least mediation can act as a filtering process for litigation or arbitration, leaving only those disputes where there is no genuine willingness of the parties to resolve them amicably to be decided by a Court or tribunal.

**What key challenges do you come across within your work in mediation?**

There are times when a party to a dispute will accept to engage in mediation with the other party without at the same time having a genuine will to resolve the dispute by any

form of agreement. Such parties treat the mediation process without respect and merely as a stepping stone to litigation.

The most difficult challenge is getting such parties to understand the importance of the mediation process and helping them find some common ground with the other party without betraying their trust.



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**How do you get around these challenges?**

I try to be as subtle as possible in guiding the parties through their dispute and to a resolution. A statement by implication for example is more powerful than a direct statement.

Apart from subtlety, preparation is also extremely important. Sometimes the best solution, and the one that the parties will more readily listen to, is simply a solution that they had not thought about previously.

**What regulatory changes would you make to the field of dispute resolution if you had the power?**

ADR is not adequately marketed and steps must be taken to make sure that parties consider all their options to resolve the dispute. To this effect my proposal is to link litigation with ADR by embedding options for pursuing the latter within the civil procedure rules.

For example mediation can become a compulsory step in all litigation proceedings. This need not delay the proceedings in any way or lead to an increase in costs if the parties retain a right to bypass the mediation process. However the fact that they will have to state that they wish to bypass the said procedure will in itself I believe force them to consider this option.

Following mediation the parties could then opt to either pursue their case before the Courts or through litigation. Again this option need not delay the proceedings. **LM**