

ADRAS A BUSINESS RESOURCE IN CONTRACT AND
COMMERCIAL TRANSACTIONS



•COMMERCIAL COURT USERS COMMITTEE
MEETING

14 JULY 2016

LAW COURT COMPLEX

ACCRA

**ADR AS A BUSINESS RESOURCE IN CONTRACT AND
COMMERCIAL TRANSACTION**

WHAT IS A.D.R.?

- **ALTERNATIVE DISPUTE RESOLUTION**
- **APPROPRIATE DISPUTE RESOLUTION**
- **AFRICAN DISPUTE RESOLUTION**

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• WHAT IS A.D.R

A RANGE OF PROCESSES, SOME RIGHTS BASED, BUT MOSTLY INTEREST BASED, DEVELOPED AS ALTERNATIVES TO LITIGATION. THE AIM OF ADR IS TO MAKE AVAILABLE TO DISPUTANTS AN OPTIMAL DISPUTE RESOLUTION PROCESS PECULIARLY SUITED TO THEIR CIRCUMSTANCE.

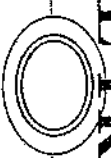
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- ADVISORY ADR
- FACT FINDING ADR
- FACILITATED ADR
- NEGOTIATED ADR
- PREVENTIVE ADR
- RIGHTS BASED *- More than just legal rights eg. team work, social media*
- INTEREST BASED *- People had interests (to be in the club) say was on court*

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• BUSINESS AND COMPANIES
HAVE SOME INTERESTS
WHICH ARE PECULIAR TO
THEM.

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- CONFIDENTIALITY
- TIMELY RESOLUTION
- RELATIONSHIPS

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**AT ITS MOST BASIC LEVEL BUSINESS IS
ABOUT PEOPLE.**

- **CUSTOMERS**
- **SUPPLIERS**
- **TRADE PARTNER/AGENTS**
- **COMPETITORS**

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- ANY PROCESS USED TO RESOLVE A COMMERCIAL DISPUTE MUST BE SENSITIVE TO THIS NEED; THAT A BUSINESS PERSON HAS TWO KINDS OF INTERESTS, ONE IN THE SUBSTANTIVE ISSUE PRESENTED AND IN THE PRESENTATION OF THE BUSINESS RELATIONSHIP.

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**LITIGATION IS NOT SENSITIVE TO
RELATIONSHIP**

- IT'S A COMPETITIVE PROCESS.
- CROSS EXAMINATION IS PRIMARILY TO DISCREDIT/CONTRADICT, MAKE YOU LOOK BAD.
- RISK OF REPUTATIONAL DAMAGE IS HIGH.
- WIN/LOOSE.

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NEGATIVE CONNOTATIONS

- LITIGANT

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- **ADR PROCESSES HAVE THE POTENTIAL TO PROMOTE EFFICIENT AND APPROPRIATE COMMERCIAL DISPUTE RESOLUTION THROUGH PROCESS THAT HELP TO RESOLVE SUBSTANTIVE PROBLEMS SATISFACTORY, WHILST MAINTAINING THE RELATIONSHIP.**

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- **INTEREST BASED OR PRINCIPLED
NEGOTIATION**
- **PRINCIPLES**
- **PEOPLE**
- **INTEREST**
- **OPTIONS**
- **OBJECTIVE CRITERIA**

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- MEDIATION
- ASSISTED NEGOTIATIONS
- PRIVATE & CONFIDENTIAL

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- **EARLY NEUTRAL EVALUATION**
- **NEUTRAL EXPERT OFFERS
ADVISORY OPINION.**
- **USED AS BASIS FOR
SETTLEMENT DISCUSSIONS.**

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• MINI TRIALS USED TO
SETTLE LARGE
COMPLEX BUSINESS
LITIGATION

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- A MINI TRAIL IS HELD
- LAWYERS OF PARTIES MAKE PRESENTATIONS TO A NEUTRAL
- PRESENCE OF HIGH RANKING OFFICIAL OF BOTH SIDES WITH DECISION MAKING POWER AND INSIGHTS TO THE ISSUES AT STAKE.
- NEUTRAL GIVES ADVISORY OPINION
- SETTLEMENT DISCUSSION FOLLOW

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- PARTNERING
- COMPLEX CONSTRUCTION
- A SUMMIT OF OWNERS
AND ALL PARTIES
INVOLVED.

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- DISPUTE REVIEW BOARDS
- CONSTRUCTION INDUSTRY
- ON SITE NEUTRALS

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• EXPERT/NEUTRAL FACT
FINDING

• ALL AVAILABLE
INFORMATION PRESENTED TO
EXPERT FACT FINDER, WHO
MAKES FINDINGS OF FACT.

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- **SECTION 111 OF ADR ACT**
- A CUSTOMARY LAW ARBITRATION AWARD MAY BE ENFORCED IN THE SAME AS A JUDGMENT OF THE COURT.
- ADR AWARDS AND AGREEMENTS NOW GENERALLY ENFORCEABLE AS IF THEY WERE A JUDGMENT OF THE COURT TO THE SAME EFFECT.

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MOVING FROM THEORY TO PRACTICE

1. USE EXISTING SYSTEMS

- **COMMERCIAL COURT**
- **A DISPUTE RESOLUTION CLAUSE THAT SUGGESTS THE USE OF NEGOTIATION, IT FAILS LITIGATION AT THE COMMERCIAL COURT, WITH A MANDATORY CLAUSE TO UNDERGO A FULL MEDIATION OR OTHER PROCESS UNDER ORDER 58 RULE 6(1).**
- **GHANA ARBITRATION CENTER, GHACMA, E.T.C.**

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2. CREATE NEW SYSTEMS

- BUSINESS ASSOCIATIONS TO CREATE
THEIR OWN DISPUTE RESOLUTION FORA.

- SEE EXAMPLES:
REFINED SUGAR ASSOCIATION

G.A.F.T.A.

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3. WORK WITH GHANNA BAR
ASSOCIATION TO DEVELOP AN ADR
PRACTICE SECTION OF THE BAR
WHICH WILL BE SENSITIVE TO THE
NEEDS OF THE BUSINESS
COMMUNITY.

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4. DRAFTING CONTRACTS WHICH
ARE WELL THOUGHT OUT AND
HAVE WORKABLE AND
IMPLEMENTABLE DISPUTE
RESOLUTION CLAUSES.

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5. AN ADR TREATY SIGNED BY
ALL THE TOP BUSINESS,
COMMITTING TO USING ADR
PROCESSES TO RESOLVE
THEIR COMMERCIAL
DISPUTES.

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• CONCLUSION

JUDGES ARE OVER BURDENED AND CANNOT REALISTICALLY BE EXPECTED TO BECOME FULL TIME NEUTRALS. BUSINESS AND COMPANIES NOW NEED TO INVEST IN DEVELOPING THE HUMAN RESOURCE NEEDED TO ACT AS EFFECTIVE NEUTRALS SO THAT VIABLE ALTERNATIVES CAN BE CREATED TO COMPLEMENT LITIGATION BOTH AT THE COMMERCIAL AND OTHER COURTS

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THANK YOU

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