



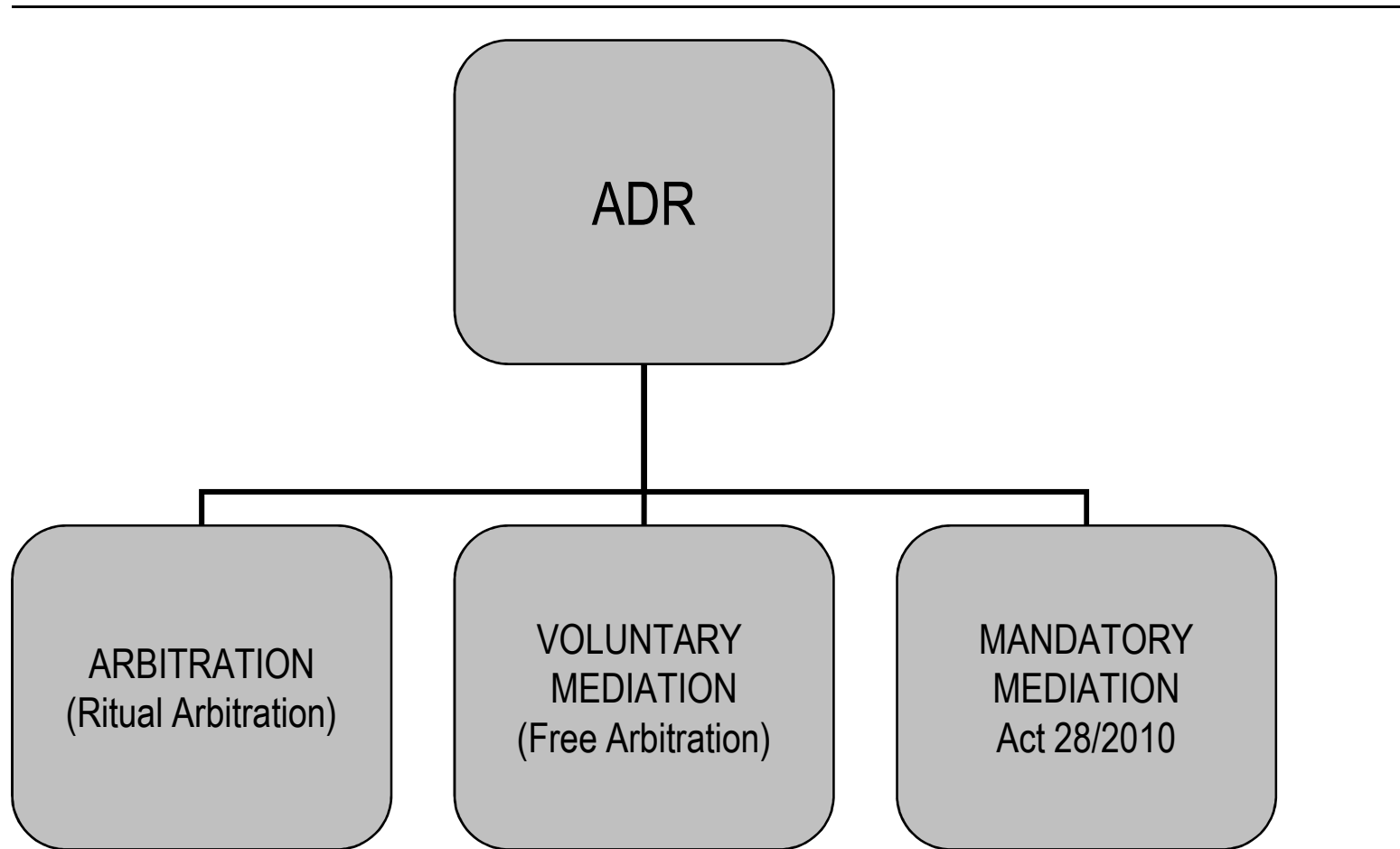
ADR

Alternative Dispute Resolution A New Frontier in Italy

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Ritual Arbitration (binding)

The right to engage in ritual arbitration arises out of a

CONTRACTUAL AGREEMENT

entered into by the parties before the dispute arose.

It is necessary for the parties to agree to submit to the authority of someone other than the court judge, in the event of a dispute.

In ritual arbitration,

THE ARBITRATOR ACTS AS A JUDGE.

His/her decision (called *lodo*) functions with

THE SAME FORCE AND EFFECT AS A DECISION FROM A COURT,

and may be acted upon in proceedings supplemental.

In the ritual arbitration method, unless otherwise agreed-to by the parties, the *lodo* must be issued within 240 days (8 months).

Ritual arbitration is comparable to mandatory arbitration in Common Law's Countries.



“Free” Arbitration (not binding)

The arbiter acts more like a mediator.

The resolution is accomplished more in the mode of an agreement, rather than a court order.

This method of dispute resolution may be requested after the dispute has arisen.

Free arbitration is similar to voluntary mediation in Common Law's countries




Mandatory Mediation in Italy

The traditional methods of resolving controversies in the area of civil and corporate law, in Italy, do not always yield the most efficient or the most desirable results.


In Italy, mandatory mediation (not to be confused with voluntary mediation) must be completed BEFORE a lawsuit can be filed.

If a lawsuit is commenced before mandatory mediation has been completed, the judge has the right to adjourn the entire case until the mandatory mediation has been done.



Since March 21, 2011, mediation has become mandatory in Italy in the following cases:

- real estate (including construction cases and cases involving distribution of property in an estate)
- division of property
- hereditary succession
- landlord-tenant disputes
- eviction
- shareholder disputes
- medical liability
- defamation
- insurance, banking, and financial contract disputes



One year later, on March 20, 2012, (due to the high volume of disputes in other types of civil liability cases) mediation became mandatory in:

- condominium disputes
- vehicular or nautical accidents



The Mediator

The mediator is an uninvolved 3° person who makes

RECOMMENDATIONS

to the parties, and the parties retain the right to agree or not.

In mandatory mediation, the parties must request a mediator from an

ORGANIZATION OF MEDIATORS

approved by the Minister of Justice.



ADR doesn't delay all decisions

Even in cases where mediation is mandatory prior to obtaining a final court ruling, the parties retain the right to seek preliminary injunctions or rulings in matters requiring urgent attention.



The Demand for Mediation

The request for mediation begins with a formal demand to the mediation organization (approved by the M. of J.).

The request must contain the following specifications:

- The name of the Mediation Organization
- The names of the parties
- The nature of the case
- The basis and support in the law for the claim or defense.

The parties have complete freedom in their choice of Mediation Organization, **HOWEVER**, the Mediation Organization chooses the individual mediator.



Procedure

Once the mediator has been assigned by the Organization, he/she organizes one or more meetings between the parties with the goal of reaching an agreement.

Each mediation session is a group meeting involving all parties.

Rarely, parties may be separated & the mediator goes back & forth between the rooms.



Duration

The entire mediation process may take up to 4 months to complete. However, if all parties agree, the mediation process may take up to 8 months maximum.



Completion

The agreement reached during mediation, once signed by all parties, is binding, and if a party fails or refuses to honor his agreement, it will be enforced by the Court.

Signed mediation agreements are binding and enforceable.



The mediator's recommendation

The mediator is required to provide the parties with his proposed resolution to the dispute.

If the mediator's recommendation is accepted by one party, but not the other, the law suit may commence.

But at the conclusion of the litigation, if the outcome (from the Court) is the same as the mediator's recommendation, the party who was found to have rejected that recommendation without justification, is required to pay all costs associated with the lawsuit.



Confidentiality

Nothing said, and no information exchanged, during the mediation process may be used in Court, unless the statement or document otherwise meets evidentiary requirements.