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The hoped-for rise of amicable and alternative dispute resolution methods in France

The protracted length of proceedings before traditional courts, heavily impacted by a chronic shortage of resources and judges allocated by the State, the rapid expansion of digital tools and the digitalization of exchanges, and the impact of the health crisis with its restrictions on movement, have all combined to encourage a growing number of French businesses to turn to arbitration, mediation, or conciliation.

Parties may resort to what are now commonly referred to as amicable dispute resolution methods (*modes amiables de résolution des différends* or MARD in French), either prior to the initiation of court proceedings or at any time thereafter.

Without relinquishing or undermining the judicial authority of the courts, the French legislator has clearly acknowledged this evolution by recently strengthening procedural rules[1] to enhance the possibilities of contractualizing the proceedings and guiding parties toward an amicable settlement – through conciliation, mediation, or arbitration – alongside the judicial process.

French courts are now assuming an educational role in promoting the use of amicable dispute resolution methods in general, and arbitration in particular, with the dual aim of reducing their caseload and facilitating the swift resolution of disputes.

Conciliation

Conciliation is a process in which an independent judge meets with the parties at the outset of the proceedings, attendance being mandatory (and subject to a fine in case of absence). The conciliator listens to both sides, taking into account their respective positions in order to propose a solution suited to the circumstances, which the parties may choose to accept or reject.

If an agreement is reached, even partially, a written record may be drawn up and signed by the parties and the judicial conciliator. The agreement may then be submitted to the judge for approval, or, if countersigned by their attorneys, the parties may ask the court clerk to certify the agreement to make it legally enforceable.

Conciliation has proven highly successful, with resolution rates of nearly 60% in commercial disputes where it is implemented.

Mediation

Mediation offers a wide range of dispute resolution methods, which may be applied at varying levels and combined as needed, either during or outside court proceedings. The CMAP (Paris Mediation and Arbitration Center) has thus developed over the past two decades as a leading institution for domestic arbitration and mediation.

In Lyon, the local Bar Association and the Chamber of Commerce have announced the creation of an Arbitration and Mediation Chamber, expected to be operational by the end of 2025, to serve all businesses in the region facing commercial or contractual disputes.

Participatory procedure

Under the participatory procedure (*procédure participative*), the parties enter into an agreement by which they undertake to attempt an amicable settlement of their dispute before bringing the matter before the court.

This agreement is concluded for a limited period of time, and representation by counsel is mandatory. The attorneys conduct good-faith negotiations in order to reach a mutually acceptable solution.

If the parties reach a full settlement, the attorneys draft a settlement agreement. Either party may ask the court to ratify this agreement or ask the court clerk to certify the agreement to make it legally enforceable.

If the parties reach only a partial settlement (for instance, the appointment of an expert to value company shares), they may apply to the court to approve the agreed points and rule on the remaining issues, in return for an expedited hearing date.

Amicable settlement hearing

An amicable settlement hearing (*audience de regalement amiable* or ARA in French) may be held during court proceedings in certain complex cases.

Under this process, a judge other than the one assigned to the case helps the parties work toward a settlement in a confidential setting. It may take place at the request of either party or be ordered by the court on its own initiative. The proceedings are suspended for the duration of the hearing.

The judge plays a central role, recalling the main legal principles applicable to the dispute so as to help the parties refine their respective positions and move toward a settlement.

The parties may ask the judge to record the terms of their settlement in minutes, which will then be legally enforceable.

Bifurcation of civil proceedings

The bifurcation of civil proceedings, a practice successfully implemented in Germany and the Netherlands, consists in having the court rule first on the core issues of the dispute – in particular the underlying legal question (for instance, the validity of a title or the principle of liability) – to enable the parties to resolve the remaining issues amicably. Failing such agreement, the parties may then obtain a second judgment on the outstanding matters.

For example, in a medical malpractice case, the plaintiff may seek a partial judgment on the principle of liability. If liability is established, the parties may then negotiate the compensatory consequences amicably. This mechanism thus aims to ensure a proportionate handling of the case by offering the parties the opportunity to settle the dispute amicably.

If these various amicable methods fail, the parties and their attorneys may refer the matter back to the court for adjudication.

Simplified arbitration

Simplified arbitration has also been promoted through a range of streamlined procedures operating alongside traditional arbitration, such as:

- a pre-filled standard arbitration agreement or terms of reference with predefined options;
- recourse to pre-constituted arbitral tribunals (saving time and ensuring impartiality);
- expedited case management, with a limited number of submissions (typically two per party);
- procedural incidents systematically consolidated with the merits.

The aim is to reduce the timeframe for a final award to six months.

While the cost of arbitration – even institutional arbitration – remains one of the main obstacles to its broader use, simplified arbitration offers a significantly lower cost structure: between USD 30,000 and USD 70,000 for a domestic arbitration (covering administrative fees and arbitrators' fees, excluding attorney's fees).

Conclusion

Resorting to an amicable or alternative dispute resolution method offers clear benefits for companies: speed, confidentiality, cost control, and legal certainty. Such methods make it possible to reach tailored solutions

adapted to the sector, the stakes involved, and any international constraints. They also help preserve commercial relationships—often strained by traditional litigation—and resolve disputes within a timeframe compatible with business needs.

It is now up to lawyers to more widely adopt these tools and to leverage the latest regulatory developments, which will greatly benefit their clients and lead to a faster resolution of their disputes.

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[1] Since Law No. 2019-222 of March 23, 2019 (as amended), the legislative and regulatory framework has mandated, for some types of disputes, a mandatory preliminary attempt at amicable (or alternative) dispute resolution before the initiation of any court proceedings.

Decree No. 2023-357 of May 11, 2023, concerning the mandatory prior attempt at mediation, conciliation, or participatory procedure in civil matters, sets out the conditions for this requirement, particularly by defining legitimate grounds and reasonable time limits that may exempt the parties from this preliminary step. Failure to comply with this obligation may result in the inadmissibility of the claim, underscoring the importance of this initial mandatory step.

See also Decree No. 2023-686 of July 29, 2023, introducing measures to promote the amicable settlement of disputes before the judicial court, and Decree No. 2025-660 of July 18, 2025, reforming party-driven case management and recodifying amicable dispute resolution methods.