

BENCHMARK FOR MANAGEMENT AND RESOLUTION OF CONFLICTS

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Our research disclosed distinct behaviour patterns among the organisations surveyed and we proposed a taxonomy to describe the corporate dispute resolution "personalities" identified.

Despite the now mainstream role ADR plays in the commercial dispute resolution landscape, there remains little in the way of publicly available information to enable organisations to benchmark themselves against their peers as to how ADR can be used most effectively in managing commercial disputes.

One of the few key resources and commonly-cited references in this regard is our major research study [***The inside track - how blue-chips are using ADR.***](#)

The qualitative study (conducted by the legacy Herbert Smith firm in 2007) gathered the experiences of in-house counsel at multinational organisations across a broad range of industry sectors. The resulting report shares the practical experience of those leading in-house counsel and gives unique access to their learning.

Alongside the research report, an [***ADR toolkit***](#) provides a guide for in-house counsel who wish to review and enhance the way their organisations use ADR.

WHAT OUR RESEARCH REVEALED

Our research disclosed distinct behaviour patterns among the organisations surveyed and we proposed a taxonomy to describe the corporate dispute resolution "personalities" identified:

- **Embedded Users**, at the top of the ADR evolutionary scale, took a systematic approach to using ADR processes where possible, were the heaviest ADR users and reported the most constructive relationships with their external dispute resolution lawyers

- **Ad Hoc Users** were organisations that appreciated the benefits of ADR use but did not take a systematic approach for a range of reasons – it might be a desire for flexibility in approach but more often it was an inability to exert sufficient control over the organisation's behaviour
- **Negotiators** were organisations that had a strong cultural preference for direct negotiation with counterparties and did not see the value in introducing a third party neutral, the mediator, unless and until a business relationship was irretrievably broken
- **Non Users** were, as the name suggests, organisations that did not use ADR processes, usually due to lack of understanding of processes and options at some level of decision making

What was also clear was that ADR use was not a factor of industry sectors or geographies – it all depended on the experience and skill levels of a small number of in-house lawyers who had the ability to influence the organisation's approach to conflict management and resolution.

With the benefit of nearly a decade to reflect on the findings and on our experience consulting to corporations on how to manage conflict effectively, it is clear that the timing of the research could have been better. It was published just before the global financial crisis; oil and other commodity prices were on an upward trajectory. Most organisations that we spoke to about it were interested but, unless they were exposed to a heavy docket of US domestic litigation, were simply not feeling the pressure to change (or adopt) systems for conflict management. Put simply, the burden of litigation (and regulatory investigations) meant that conflict management wasn't necessarily foremost in the minds of some General Counsel and even some in-house litigators.

AND NOW?

Of course all of that has changed since the global financial crisis. With the collapse in the oil price and global demand for other commodities, increased activity by regulators everywhere and the rise of business human rights, there will be few organisations that have not experienced a growing burden of commercial conflict.

So how have organisations responded? Our observations are that while some have taken steps to become, or move toward, being Embedded Users, many more organisations have not for a range of reasons. They are still Ad Hoc Users in our 2007 taxonomy.

And so here is the opportunity presented by the Global Pound Conference (GPC) series, one of the key objectives of which is to understand what users of dispute resolution want and need for the 21st Century. If corporations and other organisations who feel the burden of civil and commercial disputes attend the GPC events in their regions, they can make known their wants and needs; they can hear what their peers are doing and contribute to a pool of data that is accessible to all those who participate in civil and commercial dispute resolution. The data gathering across countries, across regions and globally allows the possibility to identify trends and cultural preferences not capable of observation through previous studies. The conversations between corporations facilitated by the GPC series events will be just as important as the data that is gathered.

Perhaps it will be time to revisit our taxonomy in 2017 at the end of the series and see how the conversations and learning from the GPC series inform corporate approaches to ADR use 10 years on.

[VIEW MORE ON ADR HERE >](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



ALEXANDER ODDY
PARTNER, LONDON

+44 20 7466 2407
Alexander.Oddy@hsf.com



DR MATHIAS WITTINGHOFER
PARTNER, GERMANY

+49 69 2222 82400
Mathias.Wittinghofer@hsf.com



EDUARDO SOLER-TAPPA
PARTNER, MADRID

+34 91 423 4000
Eduardo.SolerTappa@hsf.com



ANDREW CANNON
PARTNER, CO-HEAD,
PUBLIC
INTERNATIONAL LAW
PRACTICE, DEPUTY
HEAD, GLOBAL
ARBITRATION
PRACTICE , LONDON
+44 20 7466 2852
Andrew.Cannon@hsf.com



ELIZABETH MACKNAY
MANAGING PARTNER,
PERTH OFFICE, PERTH
+61 8 9211 7806
Elizabeth.Macknay@hsf.com



CRAIG SHEPHERD
PARTNER, KUALA
LUMPUR
+60 3 2777 5151
Craig.Shepherd@hsf.com

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