

Resource B Key procedural drivers

The 8 key drivers that are central to diagnose and design customized processes as identified by Mundi Mediators (www.mundimediadores.com) are:⁶⁸

- (i) costs;
- (ii) time;
- (iii) control of outcome;
- (iv) control of process;
- (v) reputations;
- (vi) relationships;
- (vii) enforceability; and
- (viii) confidentiality.

A proprietary MM-RapiDR™ scoring system helps to provide a consistent, structured, and flexible way of working with one or more disputants to help them.



I. The MM-RapiDR™ Scan

8 key drivers to determine what type of ADR-process might work best.

These 8 procedural drivers give an indication for the most suitable process or combined processes to resolve your case.

1 COST: How important to you are the costs you will need to pay for resolving this conflict (including legal fees, experts' fees, neutrals' fees, etc.)? (For example, are you operating on a limited budget?)

NOT at all important 1 2 3 4 5 Very important

2 TIME: How important to you is the time it will take to resolve this conflict? (For example, is resolving it as quickly as possible or as slowly as possible important to you?)

NOT at all important 1 2 3 4 5 Very important

3. CONTROL OF OUTCOME: How important to you is control over the OUTCOME of the dispute? (For example, ensuring the outcome is business-oriented you can agree to, or

⁶⁸ They are built on the 5 key drivers identified by the IMI, International Mediation Institute, Mixed Mode Taskforce: <https://imimediation.org/about/who-are-imi/mixed-mode-task-force/> and <https://imimediation.org/2021/05/04/introduction-to-the-series-of-articles-on-the-mixed-mode-task-force/>.

something a tribunal can decide based on legal principles that you cannot control, but provides certainty of an outcome?)

Guaranteed outcome most important 1 2 3 4 5 Control over | acceptable outcome most important

4. CONTROL OF PROCESS: How important to you is control over the PROCESS by which the dispute will be resolved? (For example, flexibility in deciding what documents or evidence needs to be provided, when and where to meet, etc. or having all these factors decided by a tribunal?)

Procedure decided by a tribunal is most important 1 2 3 4 5 Control over process and flexibility are most important

5. REPUTATION: How important to you is the possible impact on the disputants' reputations?

NOT at all important 1 2 3 4 5 Very important

6. RELATIONSHIPS: How important to you are relationships (with the other party or third-party stakeholders involved in the dispute)?

NOT at all important 1 2 3 4 5 Very important

7. ENFORCEABILITY: How important to you is enforceability of the outcome? (For example, do you need it to be enforceable in any particular countries?)

Very important 1 2 3 4 5 **NOT** at all important

8. CONFIDENTIALITY: How important to you is CONFIDENTIALITY of the existence of the dispute itself and any INFORMATION that may need to be exchanged to resolve this process?

Very important 1 2 3 4 5 **NOT** at all important

If most of your replies are in:

- 1, 2 or on the left side of the scale: likely best options: arbitration, litigation, mediation.
- 4, 5 or on the right side of the scale: likely best options; negotiation, or mediation.
- 3 (combined with 2 and 4): likely best options: mixed mode procedures.

Answers in the lower range of the scale (e.g., 1-2 points) can also be combined with answers on the higher end of the scale (4-5 points) to provide mixed mode processes.