

Alternative Dispute Resolutions Regarding Conflicts Between Consumers and Financial Services Providers

The Portuguese Experience

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Helena Horta

CMVM - Comissão do Mercado de Valores Mobiliários
(Portuguese Securities Market Commission)

Outline

- ▶ **Part 1: Legal framework.**
- ▶ **Part 2: Case Studies.**

Part 1: Legal framework. Introduction.

What's ADR?

Alternative dispute resolution – ADR - refers to a set of procedures and techniques aimed at permitting the resolution of legal disputes outside the courts.

Most common types of ADR instruments :

- ▶ Mediation
- ▶ Conciliation
- ▶ Arbitration

Part 1: Legal framework. Introduction.

Litigation

- High costs
- Inordinate length
- Complexity
- Frequent failure to meet the needs of the parties in dispute
- Compliance problems

ADR

- Reduction of costs
- Less time-consuming
- Flexibility
- Resolutions better suited to the parties' underlying interests and needs
- Improved *ex post* compliance with the terms of the resolution

Part 1: Legal framework. Introduction.

Mediation

- ▶ All matters are resolved by the parties (non-imposed decision)

Arbitration

- ▶ All matters are resolved by a neutral (imposed decision)

Part 1: Legal framework. Applicable rules.

- Article 165.º, n.º 1, p), of the Portuguese Constitution
- Law n.º 106/99, of 26th July – authorizes the Government to create a voluntary conflict mediation service directed towards the securities' market and financial instruments
- Portuguese Securities Code, articles 33 and 34 – foresees the implementation of a mediation center.
- CMVM Regulation number 23/2000 regarding voluntary mediation in disputes

Part 1: Legal framework. Applicable rules.

Article 33

Mediation of conflicts

1. The CMVM organises a service intended for the voluntary mediation of conflicts between retail investors, on the one hand, and financial intermediaries, investment advisers, management entities of regulated markets or MTFs or issuers, on the other.
2. The mediators are designated by the CMVM's Executive Board, which may choose individuals from its own organization or other individuals of recognized repute and competence.

Part 1: Legal framework. Applicable rules.

Article 34

Mediation proceedings

1. Mediation proceedings are defined by the CMVM's regulations and should obey the principles of impartiality, speediness and gratuitousness.
2. When the conflict concerns homogeneous individuals or collective investor interests, the association for the defense of investors may initiate the mediation and participate in it, as principal or accessory.
3. The mediation proceeding is confidential and the mediator is bound to secrecy in relation to all information obtained during mediation, and the CMVM may not use in any process material knowledge which was acquired exclusively from the mediation proceedings.
4. The mediator may attempt conciliation or propose to the parties a solution that seems more adequate.
5. The agreement resulting from mediation, in writing, has the nature of an extra-judicial settlement.

Part 1: Legal framework. Mediation.

Investor and Mediation Center of the CMVM (Portuguese Securities Market Commission)

- Public and institutionalized scheme
- Sectoral scheme
- Disputes between retail investors and financial intermediaries, investment advisers, management entities of regulated markets or MTFs or issuers.
- Free of charge for both parties

Part 1: Legal framework. Mediation.

What is “Mediation”?

This is a process in which the parties attempt to reach a consensual agreement with the assistance of one or more mediators.

Part 1: Legal framework. Mediation.

Mediators' role



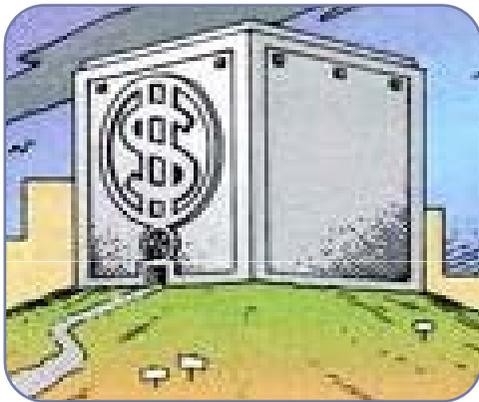
- Encourage the parties to communicate
- Assist the parties towards reaching a resolution that is acceptable to all sides
- Preserve the party's autonomy and self-determination
- Has no authority to decide the outcome of the dispute or to impose an agreement on the disputants

Part 1: Legal framework. Mediation.

Relevant values of mediation

- ▶ Consensual
- ▶ Neutrality
- ▶ Privacy and confidentiality

Part 2: Case Studies. Background.



Share capital increases
by entries in cash in
2000/2001

Acquisitions of shares
financed by an issuer's
loan



Shortly after, the issuer's
share price abruptly fell,
slowing progressing
thereafter

Part 2: Case Studies. Recourse to mediation.

Recourse to mediation

- The center received similar claims by several investors (318 investors).
- The center accepted the proposal presented by the financial intermediary to handle all the emerging disputes collectively (single investigation) and proposed a single agreement between the parties.

Part 2: Case Studies. Recourse to mediation.

Mediation convention

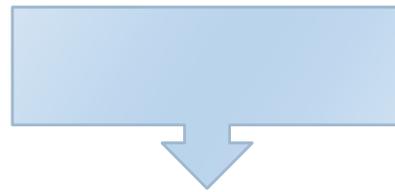
An agreement, previously defined and agreed by the parties, establishing, namely:

- ▶ The parties' intention to settle the dispute;
- ▶ The universe of dispute situations as proposed by the issuer to submit to alternative resolution;
- ▶ Mediation procedural rules (annex).

Part 2: Case Studies. Recourse to mediation.

Mediation main aspects

- **Mediators:** 2 of CMVM's employees were appointed by it as mediators
- **Duration:** 7 months, between 25 March and 30 October (377 scheduled sessions)
- **Location of mediation:** CMVM's premises, in Lisbon and Oporto; video conference for investors resident in Madeira

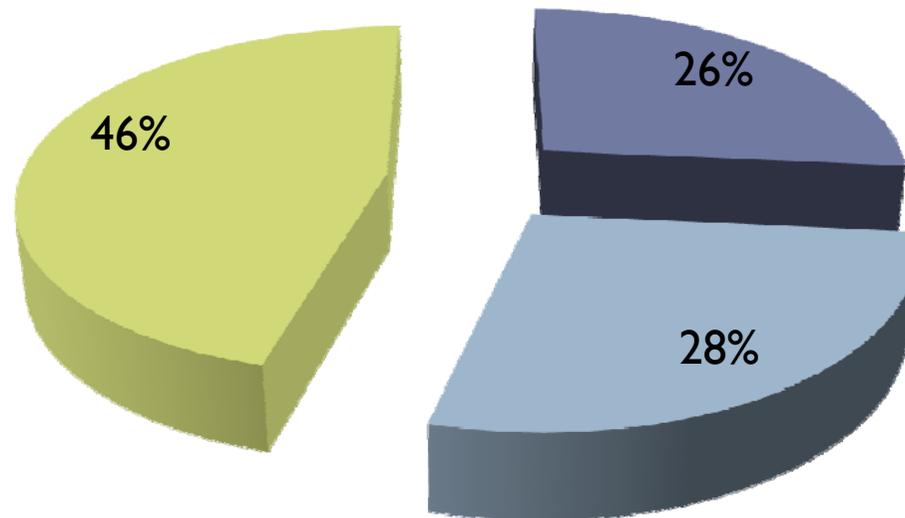


- 329 mediation proceedings relating to 404 investors (individual persons)
- 238 mediation sessions (377 scheduled mediation sessions)

Part 2: Case Studies. Outcome.

Outcome

■ Agreements (87) ■ No mediation sessions (91) ■ No agreements (151)



Part 2: Case Studies. Settled Agreements.

Settled Agreements

- The financial intermediary did not acknowledge liability and has only accepted a deficient own shares selling procedure (unsuitable advising)
- The parties agreed to annul the shares' acquisition
- Investors had received a reimbursement total amount of 793.000 euros and had returned to BCP 113.057 shares acquired in 2000/2001

Part 2: Case Studies. Evaluation.

Evaluation.

- ▶ Justice has been made quickly and effectively
- ▶ In some situations, mediation permitted that parties preserve commercial relationships after the disagreement has been settled
- ▶ Parties' reputation
- ▶ Minimization of costs, risks and stress of litigation

Way forward

- ▶ CMVM intends to encourage the use of mediation as an effective dispute resolution mechanism (e.g., by means of proposals of improvement of the legal framework for mediation)
- ▶ Steps are being taken in order to promote an institutional arbitration centre for resolution of disputes regarding financial services

Thank you!

helenahorta@cmvm.pt