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InnovADR enters the market with an innovative approach to financing dispute resolution



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Is there a way to combine litigation funding and mediation? **Jeremy Lack** – the founder of **InnovADR** – thinks so. **InnovADR** is a new and innovative approach to financing dispute resolution which offers a "no settlement, no fee" policy. The company's proprietary software allows a party to a dispute or an anonymous person to open a case. If the other parties agree to participate, InnovADR undertakes a process to diagnose exactly what is required for a bespoke appropriate dispute resolution ("**ADR**") process capable of resolving the conflict within less than 3-6

months. It proposes using mixed mode ADR, which includes mediators and any experts needed to resolve the dispute, and any laws or industry standards to be applied, etc.. If the case settles, InnovADR receives a success fee that is capped at less than 1/3rd of the estimated costs of going to trial or arbitration. The process also provides an early settlement bonus incentive scheme, encouraging counsel and other advisors to assist their clients in seeking faster, cheaper and better outcomes.

We spoke to Jeremy about InnovADR, the niche it's trying to fill in the market and whether or not the process removes the need for lawyers.

1. What was the impetus behind InnovADR? Is there a particular segment of the market you are targeting?

InnovADR's creation was inspired by the findings of the [Global Pound Conference \(2016-2018\)](#), which gathered data from over 4,000 stakeholders -- including judges, lawyers, arbitrators, mediators, ministry of justice officials, academics, and corporate executives -- across the dispute resolution field in 24 countries regarding access to justice for commercial disputes. The data suggested a significant gap exists between the demand and the supply side of the dispute resolution services market. Users seek faster, cheaper and better access to justice around the world, with a growing realisation that justice delayed or that is too expensive is justice denied, and that the costs and delays in most legal systems require change, which is why mediation (including compulsory mediation) is being brought into many legal systems. The overall results indicated global demand for greater efficiency, more collaboration, and the use of mixed-mode dispute resolutions from all stakeholders. InnovADR is a new service that seeks to address these needs and interests by focusing on seven key drivers to help disputants diagnose, design, implement and finance faster, cheaper and better dispute resolution for civil or commercial disputes, whether domestic or international. These seven key drivers are:

1. **Costs:** Reducing the expenses involved in achieving an effective resolution, and capping them at 1/3rd of the anticipated fees of going to trial or arbitration.
2. **Time:** Minimizing the time required to resolve disputes, seeking mutually acceptable outcomes within less than 3-6 months.
3. **Relationships:** Encouraging solutions that preserve or repair business and personal relationships, and enable counsel to work collaboratively.
4. **Control of Process:** Giving parties greater control over procedural matters such as discovery, the taking of evidence, submissions, need for detailed pleadings, use of experts, etc.
5. **Control of Outcome:** Allowing the parties to retain greater control over outcomes and better manage risks regarding such issues as findings of fact,

interpretation and application of relevant laws and other applicable norms, quantum and cost awards.

6. **Confidentiality:** Exercising greater control over the confidentiality of the dispute's existence, the proceedings and any outcomes (especially if enforceability/ratification is required).
7. **Enforceability:** Guaranteeing that outcomes are recognized and cost-effectively enforceable both locally and internationally within reasonable time frames.

While there is no particular market InnovADR is addressing, it primarily seeks to help disputants who are running out of time or funds to resolve their disputes, or who wish to prevent key relationships from deteriorating and the conflict from escalating further. This includes a wide range of international commercial agreements, private equity investments, start-ups, joint-ventures, strategic alliances, distribution agreements, construction disputes, intellectual property disputes, etc. We have been asked to look at some cases we were not originally contemplating (e.g., investor-state disputes, succession/inheritance and financial disputes), so it is difficult to think in terms of specific market segments.

2. Can you briefly walk us through the process from initiation of a case through your online portal to (hopefully) settlement?

Certainly. We have a six-step process, which is designed to be thorough and systematic, enabling the parties to diagnose and assess new procedural options early on.

1. **Step 1 – Submission of Application Forms:** A first party initiates a case by submitting an Application Form via our portal, with options to appear as the requesting party, a responding party, or to have InnovADR act as the requesting party. Anonymous case initiation is also possible, whereby the person opening the case will not appear as a party. The submission of the first Application Form triggers invitations to the other parties identified by the first applicant (and to any others added by subsequent parties) to fill out Application Forms as well. This form takes approximately 15-30 minutes to fill out, at which stage each party receives its own diagnostic results, free of charge.
2. **Step 2 – Submission of Due Diligence Questionnaires:** After all the parties' Application Forms have been submitted and approved by their authorized representatives, the parties are informed of their collective agreement in principle to work with InnovADR. A more detailed Due Diligence Questionnaire is then provided, which takes approximately 60 minutes to fill out. It consists only of generic multiple-choice questions. No

specific information about the case (e.g., pleadings or summary documents) is required. These questions address procedural preferences, prior experiences with disputes and the other parties, the parties' procedural interests, needs, concerns and motives, and the need to apply norms and/or the rule of law as opposed to general principles of equity or subjective preferences.

3. **Step 3 – Analysis and Proposal:** Based on these submissions, InnovADR calculates the risk of the case not settling and proposes a customized ADR strategy to all of the parties, enabling the case to settle within 3-6 months, and outlining InnovADR's proposed investment and success fees based on the likelihood of the case settling.
4. **Step 4 – Signature of an Agreement:** Should InnovADR's proposal be accepted, all of the parties having agreed to it sign an ADR Facilitation & Investment Agreement. They pay at this stage a nominal administrative fee (USD 1'000) and undertake to each pay an equal settlement fee if and when the case settles. It is only at this stage that the parties enter into a binding agreement, conditional on the dispute settling. Until this stage, there is no binding agreement by anyone (other than InnovADR's obligations of confidentiality and data protection to the applicants).
5. **Step 5 – Selection of 1st ADR Neutral:** The first neutral to be selected is usually an experienced and certified commercial mediator, who is jointly appointed by the parties. InnovADR's portal provides an online module to help select that 1st ADR Neutral if the parties need assistance in doing so. This accelerates the time and simplifies the process of finding mutually acceptable neutrals. Each party can suggest up to five mediators they would like to propose. We do not limit ourselves to closed list of neutrals and are willing to work with any certified ADR professionals. (Recommended lists and centres, such as the International Mediation Institute (IMI) are provided on our website). This module can also be used for appointing subsequent ADR Neutrals if and when needed (e.g., experts and/or arbitrators). The parties can select administered proceedings (e.g., AAA/ICDR, CEDR, CMAP, CPR, ICC, JAMS, SCCM, SIMC, etc.) or work on an ad-hoc basis. We also work with a network of partners (e.g., Mundi Mediatores), who can independently help the parties to select mutually acceptable ADR Neutrals.
6. **Step 6 – Success Fees & Invoicing:** InnovADR pays the ADR Neutrals' fees at this stage and essentially drops out of the process, unless the parties and/or the ADR Neutrals wish it to continue to be involved. The parties pay nothing if the case does not settle within the next 18 months. The parties

and the ADR Neutrals have a contractual obligation to inform InnovADR whether or not the case settled, and if it did, whether completely or partially. A success fee is then invoiced to each party having participated based on the settlement outcome, which is to be paid within ten (10) business days, creating transparency and fairness in fee structures.

The entire process is designed to enable each dispute to be resolved within less than 3-6 months from the appointment of the 1st ADR Neutral, in more than 85% of cases. Each party receives an invoice only if the case settles, and in accordance with the signed Agreement. InnovADR also encourages the parties to pay an early settlement bonus to their counsel, as an incentive to also seek earlier settlement.

3. Can you describe how you maintain the confidentiality of the party requesting the ADR process?

InnovADR has created four options to deal with this issue. The person initiating a case can choose to be registered as:

1. **A Requesting Party:** This option is available to a party that wishes to act transparently and let the other parties know it has initiated the case;
2. **An Anonymous Person:** This option is available to any person who is affected by the dispute but is not a party to it, and wishes the parties to resolve it. They are not considered to be a disputant and no further information is provided to them after they open the case;
3. **A Responding Party:** This option provides that there is no requesting party, and that all of the parties are only willing to try to work with InnovADR on condition that the other named parties agree to do so as well; or
4. **InnovADR as the Requesting Party:** InnovADR acts as the requesting party, even if its participation is not required to resolve the dispute. In that case, InnovADR is identified as the requesting party.

These four options protect the identity of the person having initiated the case. This means that even in a two-party dispute, it cannot be assumed that the other party is the requesting party or initiated the case, since options 2, 3 and 4 are processed in the same way. Confidentiality of the parties, their participants, and the existence of the process are key considerations that InnovADR takes very seriously. We protect the identities of the persons opening each case, and are bound by strict data protection and confidentiality obligations in Switzerland, where we and our databases are located. It is important to also note that we do not ask for any information about the case itself, and do not need to receive any sensitive documents, pleadings or exhibits. Our process is based on our proprietary algorithms, which allow us to propose bespoke processes based on the parties' responses to our multiple-choice Application Forms and Due Diligence Questionnaires.

4. Does the process preclude the use of lawyers?

Our dispute resolution approach not only includes but emphasizes the benefits of involving lawyers throughout the entire process. Far from precluding their involvement, we consider lawyers to be integral to the success of dispute resolution, playing crucial roles at multiple stages:

1. **Preparation and Form Filling:** Lawyers can assist the parties in preparing and completing the necessary forms that are fundamental to our process.
2. **Assessment of Negotiation Alternatives:** They can help the parties' evaluate their Best, Reasonable, and Worst Alternatives to a Negotiated settlement Agreement (BATNA, RATNA, and WATNA), considering the impact of possible outcomes if the case goes to trial or arbitration.
3. **Selection of ADR Neutrals and Advocacy:** Lawyers can also play a key in the selection of appropriate ADR Neutrals for the type of process agreed to, and to advocate effectively during presentations to experts (if and when needed).
4. **Negotiation and Settlement:** Their role extends to generating options, helping with negotiations, and drafting the final settlement agreement (which will be needed in over 85% of cases).
5. **Collaborative Discussions:** We encourage lawyers to adopt a collaborative stance, understanding and incorporating the subjective needs and interests of all parties, looking to the future. This includes considerations of impacts on relationships, reputations, other business transactions, and third parties.
6. **Strategic Analysis:** Lawyers also facilitate SWOT analyses -- assessing the Strengths, Weaknesses, Opportunities, and Threats of a case -- helping to bring senior executives to the negotiation table to enhance opportunity-creation through a facilitated settlement process.
7. **Enforceability:** Additionally, lawyers handle any formalities required under local laws or international conventions to ensure the enforceability of any settlement agreement. This can mean the homologation, ratification or notarization of key documents, as well as possibly drafting the settlement agreement to be in separate parts, for example as an arbitral consent award under the New York Convention for certain topics, and as a separate agreement protected under the Singapore Convention for other topics.

While lawyers are not essential for ADR processes, their expertise not only ensures adherence to certain standards but also significantly contributes to crafting outcomes that are beneficial for all parties involved, guided by both legal benchmarks and the

overarching interests of the clients. InnovADR actively works to align lawyers' incentives with the goals of swift, cost-effective, and mutually satisfactory resolutions. As a result, we also provide an economic incentive for quick and effective resolution, including early settlement bonuses for counsel. Recognizing the traditional hourly billing model of legal firms, InnovADR has designed an incentive scheme that benefits lawyers financially, allowing them to earn potentially more than a year's worth of fees in a much shorter duration. That is one of the reasons why we do not base our success fees on the value of the dispute but based on the cost savings that are possible, and why we cap our fees to 1/3rd of that amount. This ensures there are enough savings left to also incentivise lawyers and other key advisors.

5. Can you describe how your success fee is calculated and what it typically covers?

Our fees are calculated based on a combination of three things:

1. **Return on Investment:** Reflecting the upfront investment we make paying the fees of the ADR Neutrals and any ADR institutional fees, to ensure the neutrality, independence and impartiality of any persons or centres used.
2. **Management Effort:** Covering the time and effort made by InnovADR in designing, recommending and helping the parties to implement the agreed ADR process or combination of processes.
3. **Our Cap on Fees:** Our price ceiling, whereby our fees cannot exceed 1/3rd of the anticipated costs of going to trial or arbitration, to ensure there is enough money left to incentivize counsel and other advisors to settle earlier as well.

Our fees will range on whether we determine a dispute as having a low, medium or high risk of not settling. For low-risk cases, we normally charge a minimal return of 4x the amount we will actually invest. For high-risk cases, we may make an offer closer to our 1/3rd cap. In particularly complex high-risk cases (e.g., an investor-state case where mediators, experts and arbitrators may be needed), we may not pay the ADR Neutrals' fees in advance and have the parties pay for them themselves, but we will still work on a "no settlement, no fee" basis, with our fees remaining capped at 1/3rd of the anticipated costs of going to trial or arbitration.