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Alternative Dispute Resolution Systems in Italian Banking and Finance: Evolution and Goals

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6.1 Alternative Dispute Resolution (ADR): in general. An answer to the need for justice

Our country’s integration in the field of economic law with international financial systems has brought about a profound change in the world of banking, and within this, the adaptation of our institutions to current challenges has become of paramount importance. There has been a corresponding increase in companies which, on the one hand, has placed the search for suitable measures to safeguard the stability of the system in new terms and, on the other hand, requires the identification of more adequate ways to protect the interests of those operating in the market (financial intermediaries and customers).

This state of affairs has led to a greater awareness of the rights and duties of those operating in the marketplace. This explains the reasons for which, from the turn of the century onwards, in our country, we have seen an increase in dispute situations in the judiciary and, as concerns this paper, the performance of financial services,¹ allowing the introduction in Italy of class action, which can be considered particularly suitable for finding workable solutions in this kind of situation (Art. 140b of Italian Legislative Decree No. 206/2005).

This increase in disagreements, in the absence of suitable forms of dispute resolution (constant increasing in number in the face of a continuously growing financial sector) has led to a search for solutions to deal with the defects in our judicial system. A clear example
of these is the excessive duration of civil cases, with obvious repercussions for the carrying out of “justice”. It should be remembered that the Italian Constitution, in Art. 111, expressly recognizes the citizen’s right to obtain justice in a reasonable timeframe. Ample guarantees in a European context are provided by Art. 6 of the European Convention for Human Rights (which recognizes the right of “every person” to expect that “his or her case be examined fairly, publicly and in a reasonable time period by an independent and impartial judge, established by law”) and by Art. 47 of the European Union Charter of Fundamental Human Rights.

Included in this is the legal provision for the obligation to establish alternative systems for dispute resolution, an obligation confirmed by the Lisbon Treaty. This latter has expressly affirmed the principle by which the European Parliament and the Council adopt measures aimed at ensuring “the development of alternative methods of dispute resolution” (Art. 81 of the Treaty on the Functioning of the European Union), leading to the return of ADR methods into the fundamental documents of the European Union.²

The difficulty in swiftly satisfying the needs of justice³ is the basis for the search (moving in non-traditional directions) for an immediate and sound answer to the pressing need for justice. It includes, therefore, the positioning of the doctrine by which the current globalization of financial markets, increasingly highlighting the need for uniform means of protection, accentuates the drive toward a requirement for instruments able to lead us smoothly toward the resolution of disputes in banking.⁴

Thus, recourse to forms of “private justice” essentially finds expression in alternative methods of dispute resolution, the most important of which is the action (i.e., initiative) which, indeed, depends on private citizens.⁵ In place of “normal justice”, it confirms the practice of technical procedures instrumental in simplifying the preliminary investigations, accelerating and concentrating the procedures and searching for solutions based on new and differentiated experiences. Through the possibility of referring to forms of conciliation based sometimes on arbitration, sometimes on social interaction and sometimes on information technology, we can reach a composite and varied situation in which the sequence of methods is combined with finding the most suitable approach so that disputes are resolved before arriving in the courtroom.