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3HR Legal Weekly

Commercial

Commercial Disputes – Part 1

In business, disputes are inevitable. Despite the best of intentions, there often comes a time when two parties become entrenched in their positions and the relationship breaks down. This is where dispute resolution comes in. While the most well-known dispute resolution process is litigation, there are alternatives.

The first thing to consider is whether the relevant contract contains any dispute resolution provisions. It is common for modern commercial agreements to set out the process that will be followed should there be a problem that the parties cannot resolve on their own. This could be a clause that dictates that the parties enter into mediation, or even arbitration.

Mediation is a process that can be used at any point in the dispute resolution process, but it can be prescribed as an alternative to litigation in the first instance. It involves an independent third party getting involved to see whether they can find any common ground between the parties. They meet with both parties (either separately or together) and find a way to resolve the dispute, and often even allow the business relationship to continue.

Arbitration is more formal. This process substitutes a suitable independent arbitrator for a judge. Rather than go to court, the contract may stipulate that the parties make their representations to the arbitrator, who will then produce a decision based on the evidence presented. The arbitrator will be an expert in the field, and may be selected by a third party to avoid any links with the parties.

If you establish that litigation is appropriate, you should then look at the size of the dispute. For smaller matters, it is very likely that the court will allocate the matter to the small claims track. This is generally where simple matters worth less than £10,000 are dealt with. The procedure is simpler and quicker than the normal process, but it comes with one important caveat. While the usual costs position is that the winner of the case gets his costs paid, in the small claims court it is very unusual for any party to be awarded costs. You are perfectly entitled to use a solicitor, but if you do you will have to pay all your own legal costs, even if you are completely successful.

The thinking behind this is that in smaller matters the parties should be capable of navigating the court process by themselves. The simplified small claims process is designed so that anyone can get access to justice by representing themselves. It would also be disproportionate for costs to be awarded on smaller matters, as the legal fees involved can often exceed the amounts in dispute.

If your matter is worth more than £10,000, then the matter will not be allocated to the small claims track, but will instead go to the fast or multi-track. We will look at those processes in a future newsletter.

Should you require any assistance in this or any other commercial area please refer to our 3HR Commercial Law team which can advise accordingly.

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