

## PROCEDURES FOR URGENT DISPUTE RESOLUTION

These turbulent times are likely to give rise to many disputes which need to be resolved more urgently and cost effectively.

This briefing sets out ways of resolving disputes efficiently, especially by various ADR and arbitration techniques.

Many of these can be done remotely and online. Also see our previous briefing: [Coronavirus: Dispute Resolution in a 2D world](#)

### MEDIATION AND OTHER NON-BINDING FORMS OF ADR

Parties should consider amicable or alternative dispute resolution (ADR) procedures. The outcome is not binding and requires the parties willingly to implement the outcome. However, it can be very quick and cost effective with the added benefit of more likely maintaining commercial relationships.

#### Mediation

The parties can engage a mediator to help them reach an agreed solution. Mediation is described as 'interest based' rather than 'rights based'. The mediator conducts shuttle diplomacy between the parties to understand their respective grievances and to encourage a mutually beneficial settlement. The procedure can be as formal or informal as the parties choose. Likewise, the mediator can be asked to suggest an outcome or just leave it to the parties.

#### Neutral Evaluation

The parties can ask a third party to give an opinion on the strengths and weakness of each party's position. The outcome is not binding (unlike expert determination), but this has the advantage that it is quicker and cheaper and may prompt a settlement.

Mediation and neutral evaluation are usually 'without prejudice' and cannot be relied on in subsequent proceedings.

#### Adjudication

Adjudication is similar to neutral evaluation but tends to involve more evidence and lengthier submissions. Often parties agree beforehand to implement the outcome, subject to review in subsequent court or arbitration proceedings.

#### Key issues

- Parties who need disputes resolved urgently and cost effectively should consider ADR techniques to assist them reach an amicable settlement.
- If disputes are subject to arbitration, and if the circumstances justify it, the parties may apply for an Emergency Arbitrator and/or expedited proceedings.
- Even if the parties have not previously agreed to arbitration, if the relevant courts are closed or facing delays, the parties can still agree to go to arbitration instead.

## **EXPERT DETERMINATION**

The parties can agree to appoint a legal or technical expert to determine certain issues. The expert's decision is usually binding and enforceable (unless otherwise agreed).

## **EMERGENCY ARBITRATOR**

Where the parties have already agreed to refer any disputes to arbitration, a party may be able to apply for the appointment of an Emergency Arbitrator if urgent interim relief is needed, such as the preservation of evidence or protection of assets or halting a shareholder resolution.

This provides an alternative to applying to the courts. However, an Emergency Arbitrator will not have as extensive powers to make orders affecting third parties, such as freezing bank accounts.

Such option is found in the rules of most of the leading international arbitral institutions rules, such as: London Court of International Arbitration (LCIA); International Chamber of Commerce (ICC); Hong Kong International Arbitration Centre (HKIAC); Singapore International Arbitration Centre (SIAC); and the International Centre for Dispute Resolution (ICDR).

Typically a decision must be given within 5 to 15 days.

If that does not end the dispute, it can be followed by full arbitration proceedings, usually with a different tribunal.

## **EXPEDITED ARBITRATION PROCEEDINGS**

Many arbitral institutions have 'fast-track' rules for lower value disputes (including 'documents only').

Most provide for expedited constitution of the tribunal, where the situation justifies it.

In any event, tribunals are encouraged to adopt procedures suitable to the circumstances, avoiding unnecessary delay or expense. These might include an accelerated timetable and/or determination of preliminary issues.

## **SUBMISSION TO ARBITRATION AFTER DISPUTE ARISES**

With many courts closed or facing delays, if the parties want a similar process leading to a binding decision, they can agree to have their existing dispute resolved instead by arbitration. They need only agree a short 'ad hoc submission to arbitration' and agree the applicable procedural rules.

This can be done even after litigation has been commenced.

Arbitral tribunals are used to arranging virtual hearings and being flexible.

The parties should bear in mind that there are usually more limited rights to challenge an arbitral award than to appeal a court judgment, so they may wish to ensure that the right to appeal a point of law is retained.

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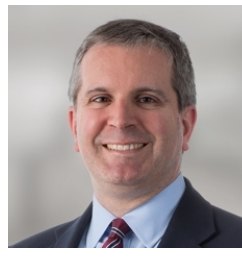
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