

Publications

Sample multi-tier dispute resolution clauses

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These sample clauses are intended for use in the United Kingdom and internationally and ADR Group endeavours to keep them current with developments in United Kingdom legislation and case law as well as European Union directives and regulations.

Alternative clauses for Litigation and Arbitration are included as consequential provisions in the event Mediation does not succeed in resolving the dispute and the parties must resort to a further process.

The choice of applicable law as well as the choice between litigation or arbitration is left for the practitioners to determine when drafting the underlying agreement.

Introduction

The inclusion of a carefully drafted Dispute Resolution clause in an agreement provides guidance to the parties on how they should proceed in the event of a claimed breach of that agreement.

The sample clauses below include both a Simple Mediation clause as well as two formulations of Multi-tiered clauses including negotiation, mediation and litigation or arbitration.

Mediation is the most commonly used ADR process for resolving disputes as it provides a quick and confidential forum for the resolution of a dispute through the facilitation of a neutral third party.

Mediation settlements are reached by mutual agreement of all parties involved and they are legally binding upon them.

For a Mediation clause to be enforceable the clause itself and the Mediation Rules incorporated into the clause by reference must be clear and unequivocal as to how the mediation process will work if the parties are not fully cooperative. These samples seek to achieve this objective by incorporating by reference the Mediation Rules of ADR Group.

The inclusion of a Dispute Resolution clause in an agreement therefore requires careful consideration by the parties and their professional advisers.

In order to address the international application of these clauses we have also included a Governing Law clause in these examples.

A. Simple Mediation clause

Governing law

This Agreement and any matters arising out of it shall be governed by and construed in accordance with the laws of [insert country].

Mediation

Any dispute relating to this Agreement which cannot be resolved by negotiation between the parties within [insert number] days of either party having given notice to the other party that a dispute has arisen shall be submitted to mediation pursuant to the Mediation Rules of the ADR Group.

B. Multi-tiered Dispute Resolution Clause - Negotiation, Mediation then Arbitration

Governing law

This Agreement and any matters arising out of it shall be governed by and construed in accordance with the laws of [insert country].

Dispute Resolution

Any dispute relating to this Agreement which cannot be resolved by negotiation between the parties within [insert number] days of either party giving notice to the other party that a dispute has arisen shall be submitted to mediation pursuant to the Mediation Rules of the ADR Group and failing settlement of that dispute by mediation within [insert number] days thereafter, the dispute shall be submitted by any party for final resolution by arbitration by [insert number] arbitrator(s) conducted in [insert city] in the [insert] language and in accordance with the Rules of Arbitration of the [insert name of arbitral body].

C. Multi-tiered Dispute Resolution Clause -

Negotiation, Mediation then Litigation

Governing law

This Agreement and any matters arising out of it shall be governed by and construed in accordance with the laws of [insert country].

Dispute Resolution

Any dispute relating to this Agreement which cannot be resolved by negotiation between the parties within [insert number] days of either party giving notice to the other party that a dispute has arisen shall be submitted to mediation pursuant to the Mediation Rules of the ADR Group and failing settlement of that dispute within [insert number] days thereafter, the dispute shall be submitted by any party for final resolution by the courts of [insert country] which courts shall thereafter have exclusive jurisdiction.

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