

Dispute Resolution



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DISPUTES AND RESOLUTION

Disputes are a fact of life, whether in people's personal lives or in the business world. They are as customary as they are disagreeable and common to all human beings and organizations, wherever they dwell or are established on this earth.

Though disputes are common to us all, the way of dealing with them and trying to resolve them varies a great deal.

In keeping with each people's culture and level of civilization, we find either the prevalence of litigation – if not of violence – or a tendency towards settlement and negotiation.

Without going into too much detail on this topic, we must consider that the tendency to self-regulate a dispute, to cut it short, to seek conciliation and negotiation and to explore solutions for the future are characteristics that are inherent in more advanced and organised levels of civilization.

When a dispute arises, the manner in which it is dealt with and managed should be pondered over at length. Wrath, revenge, the desire to win or to humiliate an enemy or adversary are, almost always inadvisable.

A great deal of consideration should be given to the answers to basic and simple questions such as the following four:

1st question: Am I sufficiently informed of the options at my disposal, both judicial and extra-judicial, to resolve this dispute?

It is commonly thought that disputes can only – or should only – be resolved in courts of law. However, it is necessary to consider that today there are other contractual or self-regulated solutions, such as mediation and arbitration which may be desirable alternatives to courts of law, insofar as they are quicker, more specialized and more confidential.

2nd question: After knowing what options are available to me, should I adjudicate the resolution of the dispute to third parties or should I continue to manage it, seeking a consensual solution?

To begin with, it may be useful to propose mediation to the opposite party. Such a solution is particularly advisable when there is a desire to avoid publicity concerning the dispute at all costs so as to permit maintaining commercial relations between the parties, or when the level of difficulty and complexity of the dispute call for intense negotiations and a great deal of thought before going to court.

It may come as a surprise that this extremely speedy and low cost form of dispute resolution has such a high success rate. Indeed, in Anglo-Saxon countries, 70% of disputes are resolved by way of settlement.

3rd question: Should a consensual solution fail, am I appropriately assisted so that the dispute can be adjudicated? And should I propose arbitration to the opposing party or should I prefer recourse to a court of law?

The value of an award granted by an arbitration court is the same as one granted by a court of first instance. Furthermore, the former is normally given within a six-month period and follows a much simpler procedure than the one imposed by law on courts of law.

Arbitrators may be empowered to decide not only in accordance with the law but also with the material justice applicable to the specific case to be decided (equity). The right to appeal can be waived and there is greater confidentiality than in public proceedings in courts of law. Moreover, arbitrators can be chosen in line with the technical characteristics of the dispute, thereby ensuring that the right persons are selected to understand and decide the issues at stake.

All of this is organized by the parties themselves or by an Arbitration Centre, at a final cost not exceeding that resulting from bringing a case before a court of law.

4th question: How should I pay those who assist me in resolving the dispute?

Have you ever considered that one of the most irrational forms of paying someone is based on the amount of time spent on a task? Are you not favouring slow workers who want to draw out the dispute instead of quick and imaginative ones who share your concern in wanting to rapidly end the dispute? Would it not be more intelligent to pay them according to the success they achieve in the shortest amount of time possible? Or to make use of mixed forms of remuneration?

Many other questions and options can be raised.

The message which I want to convey, however, is simple. The management and resolution of a dispute is an act or a series of management acts which may be considered both at an individual level and/or are within the competences of a corporation's management, but follow the same assessment criteria and ratio analyses as stringent as those regarding productivity, profitability or others.

And the more a dispute is pondered and decided upon in an informed manner, the quicker it will be resolved.

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