

FINDING COMMON GROUND

HOW TO RESOLVE DISPUTES WITHOUT DAMAGING YOUR BUSINESS RELATIONSHIPS

There are many ways to solve a financial dispute. But how do you decide which one will deliver the best outcome for your business, minimise stress and mitigate damage to your business relationships?



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LITIGATION

Going through the courts with litigation can be a tempting go-to option and is often used as a threat in early negotiations. In New Zealand there is a well-established court system that will ensure your case receives a fair hearing and that decisive justice is delivered. The District Court deals with more straightforward cases involving amounts disputed of up to \$350,000. For larger sums in dispute, or where the matters are complex, there is the High Court, where either party can apply for a specialist commercial panel judge to hear and manage the case. In either scenario, if you aren't satisfied that the ruling is fair, the Court of Appeal is a senior court that can review an unfavourable decision.

However, before taking your existing and potentially future business partner to court, it may be useful to explore other options. Whilst settlement in court can offer first-class justice, it can also be very time-consuming. Sometimes litigation can take more than a year, and the overhanging uncertainty during that time can make it difficult to make future business plans. Court cases are also heard publicly, which may draw unwanted attention to your business and might reveal information you would rather keep confidential. Court action is also often highly damaging to what is already probably a strained relationship between the parties.

Litigation is usually the most expensive avenue of justice. Legal and accounting fees would be incurred for any formalised dispute resolution process but, by going through the courts, these costs can run much higher — and then there are court fees on top of that.

If litigation doesn't sound like the right solution to your grievances, alternative dispute resolution options are available!

MEDIATION

Mediation usually precedes litigation and is often required. This is a less formal way for parties to come to an agreement. Negotiations are conducted by the parties, their legal counsel and experts. A skilled mediator oversees talks, and instead of imposing a view on the parties, which is the case with more aggressive forms of dispute resolution, it is the mediator's role to develop and explore settlement options. It is often more empowering for the parties to find consensus and can lead to a much better outcome for business relationships. Mediation is also confidential between parties and is often less costly.

To get the most out of mediation it is helpful to have realistic expectations that you may need to settle for a sum that is

less than what you were hoping for, to avoid the lengthy and costly process of escalating your case further.

ARBITRATION

Arbitration works slightly differently to litigation. Cases are kept confidential and parties have much greater control over the timeline and place than with court proceedings. In arbitration, it is common for either one arbitrator or a panel to be chosen by the disputing parties. Evidence is put forward in hearings and the outcome or 'award' is legally binding. The primary objectives of arbitration are to be fair, prompt and cost effective, with proceedings proportionate to the amount and complexity of the dispute. However, unlike litigation, the arbitrator's verdict is final. Appeals can only be heard in extremely rare circumstances so there are no more options once an award has been issued.

EXPERT DETERMINATION

Expert Determination gives more control over the decision-making process. Like arbitration, it involves an independent party deciding on the outcome of the case, usually an expert in the field in dispute (for example, an accountant). It differs to arbitration in that it is less formal and not governed by legislation. A contract is made between the parties, giving specific instructions to the expert on what they want him or her to decide, and whether they are bound to the decision. Expert determination is particularly suited for disputed sale and purchase agreements and share valuations.

Unfortunately, parties sometimes cannot find common ground and are unable to settle the dispute between themselves. Everything then escalates to one of the more decisive, yet drawn out and expensive options. Prior to any external authority imposing a decision, the parties can settle between themselves at any time, and often do once they see how proceedings (and costs!) are going.

When entering into a new business relationship or writing a contract with a friendly business partner, it pays to think about how you would like to resolve any dispute should things get uncomfortable down the line. You should consider a clause in a contract as to how disputes will be settled — giving you one less thing to argue over later! A bit of forward planning could save a lot of time, money, stress and help keep business relations amicable.