



DISPUTES

IT'S A MINEFIELD OUT THERE!

An awareness of dispute resolution strategies is as important to avoiding a dispute as it is to resolving one should it arise. Being aware of the common pitfalls, as well as workable solutions to these, will help you to avoid matters escalating into full disputes. This will minimise the time and cost which you require to spend dealing with these, allowing you to focus on your core business. Successful strategies and advice tailored to your business will also assist you in maintaining commercial relationships as potential disputes are navigated. These strategies will also inform your internal practices in order to prevent further disputes in the future.



AVOID THE TRAPS



The aim of these strategies is to allow you to **PREVENT** disputes from arising in the first place; to **TREAT** potential disputes in order to prevent escalation; and to **CURE** disputes effectively on a long term basis should they arise.

PREVENT:

Be on top of your contracts:

Are you working from the correct documents? This might sound straightforward but in a fast growing tech company there can be a high turnover of contracts with your respective customers, suppliers and contractors. Common pitfalls include: working from out of date/superseded contracts, or having multiple contracts

governing the same/overlapping scopes between the same parties;

Have you started work before the contract has been signed? For example, working from contracts that have been negotiated but never completed – or where key terms remain outstanding and are still being negotiated.

Do you know what each of your contracts say? Do all of your teams know enough about the various contracts in place to ensure they can protect your rights and preserve your position during its operation i.e. are there specific triggers in respect of Relief Events, are there requirements

to be met in terms of how a breach is notified, what steps need to be taken on termination, what are the Notice requirements and what provisions are time sensitive;

Do you know your Dispute Resolution provisions? It might appear as though this will not be relevant unless or until a dispute arises. This is a common pitfall as it prevents tactical strategies being employed during the life of a contract that may assist should a dispute arise. It is important to be aware of how, where and by who a dispute would ultimately be resolved, as well as whether there are any escalation steps within your Dispute Resolution clauses, all of

which can provide leverage if used at the right time;

As relationships develop and businesses grow, scope creep is common. This is particularly the case in fast moving projects and businesses. It is important to be aware of this before it leads to later problems. In particular, are changes to deliverables reflected in your documentation and are any contractual variations properly captured (in line with the contractual requirements)? The real opportunity comes from managing this in a way that protects your position but does not compromise on flexibility and innovation in delivery;

AVOID THE TRAPS



TREAT:

Action taken when a dispute arises:

It is important to be mindful of how you are communicating with the other side and how you are documenting the actual, or potential, dispute. The key is to avoid creating a paper trail that could later be used against you and ensuring that appropriate use is made of without prejudice correspondence in order to maintain privilege and protect your position.

It is important to be aware of your legal position and rights upfront when trying to resolve a dispute. This will dictate the correct strategy to take forward.

CURE:

Retention of key documents and notes of key meetings:

The outcome of disputes are often based on – as well as turn on – what the documents say. This is important both (1) to understand properly the legal position and the appropriate strategy to take and (2) to prove that your legal position is correct (in particular to contradict assertions from witnesses that the position is different to your position).

The importance of a robust storage system for your documentation including contractual documents cannot be overstated.

Carry out regular reviews to ensure these are up to date and that

operations on the ground match the contractual documentation in place;

Make sure all teams know the key provisions of contracts to the extent they are relevant to their role. Consider internal summary pages of Do's and Don'ts with different suppliers, customers, contractors etc;

Ensure appropriate steps are taken to reserve your rights if the potential for a dispute arises. Be aware of any key time limits for action within your contracts. Be mindful of making any concessions without advice and ensure that detailed notes are kept in respect of all key meetings; Take “behind the scenes” advice to guide negotiations. Do not presume that involving a litigator in your

business should only start once you are already in a dispute. Advice can be provided without the other party being aware – balancing the importance of maintaining what are often ongoing commercial relationships alongside properly protecting your position should matters escalate;

Take advice on and establish core principles for Dispute Resolution which work for your business model. Consider your priorities – whether that be governing law, the exclusive jurisdiction of a particular place/court, the need for flexibility in remedies or the importance of confidentiality – and ensure your contracts reflect these requirements as far as possible.

LYNSEY AND JAMES WOULD
WELCOME THE OPPORTUNITY TO
TALK YOU THROUGH AG'S PREVENT,
TREAT, CURE APPROACH TO
AVOIDING DISPUTES - ALLOWING
YOU TO FOCUS ON YOUR FAST
GROWING TECH BUSINESS



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