



Resolving disputes in challenging times



By Azlan Sulaiman

Prudent dispute resolution management should be practiced at all times, be it in times of economic prosperity or when the economy is in turmoil. As is often the case, however, litigants probably pay more attention to prudent dispute resolution management in the latter climate. Here are some practical tips for resolving disputes, particularly in challenging times.

Consult legal counsel early

The overall objective of dispute resolution is for a dispute to be resolved timeously, cost-effectively and in the litigant's best interests (given the circumstances of the case). If sought at the outset, counsel can provide valuable input on your legal position, potential issues of contest and your best steps forward, which advice can be assessed alongside your commercial considerations when deciding what your first step should be towards resolving the dispute. If sought too late in the day, a wrong step that may have been taken that might prejudice one's case or delay or thwart recovery.

Compile all documents and information

A claim should be pursued only after all relevant information has been brought to the attention of your counsel and considered. It is only then that he can advise you on the strengths and weaknesses of your case and the best way to approach its resolution. Let your counsel be the judge of what information is and is not relevant to your case. This means that, at the outset of the dispute, you should take the time to compile all documents and information relating to your claim. This will also avoid the need to amend the claim during the course of the court or arbitration proceedings, which will simply take up valuable time and cost you more than was necessary. Compilation of all documents and information at the outset also means that you would be commencing a claim on sure footing, and no time would be wasted as you pursue your claim.

Explore settlement constantly

The old adage that 'litigation is a last resort' still holds true. Furthermore, in times of economic turmoil, a litigant might just be willing to accept a settlement of a lesser sum, or be willing to make other concessions just to avoid the threat of a protracted litigation or a costly arbitration. So it makes sense to explore settlement before any litigation or arbitration is commenced. You may also wish to explore settlement of your pending cases. Essentially, settlement should also be explored at all stages of dispute resolution. Drive a hard bargain if circumstances permit.

Negotiate your legal costs

At the outset of engagement of counsel, negotiate and agree on the estimated legal fees. This is possible once counsel is briefed on the facts of the case so they can thereby appraise what steps will likely be needed from commencement until completion and assess fees. But a word of forewarning – the cheapest counsel may not necessarily provide the best service. Do not forsake good reliable counsel for the purpose of saving on legal fees. Competent, experienced and reliable legal counsel can often enough save you costs in the long run and provide you the best advice for resolving the dispute expeditiously.

Pursue your claim vigorously

Once you have taken the decision to litigate/arbitrate your claim, pursue it diligently and vigorously. As claimant, you will be in the driver's seat. Even though you will still be subject to the timetable of the court or arbitral panel, you will still retain some measure of influence on the speed with which the claim is disposed of. The vigorous prosecution of your claim will also indicate to the respondent that you are serious about your claim and may just persuade them to consider settlement.

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