

# Four focus areas for reducing the chances of commencing litigation

**Implementing effective dispute prevention processes can be difficult. So if a firm is looking to reduce the burden that disputes impose on its business, where could it start? Our experience points to four focus areas.**



## **1. Understand the catalysts for disputes – and plan for them**

There are several easily identifiable catalysts that make disputes more likely. The specific catalysts will vary for each individual firm, depending on the nature of its customer and supplier base and the markets in which it operates. However, a number of catalysts are common across most industries, as shown in the information panel below.

By monitoring for these catalysts, undertaking an effective risk assessment and allocating resource early to areas of heightened risk, organisations can anticipate problems before they arise, head disputes off at the pass, and switch from a knee-jerk, reactive response to a more considered and planned approach that reduces the likelihood of disputes. What's more, investing time and effort up front in understanding the underlying circumstances will pay dividends if a dispute does actually arise.



## **2. Invest in escalation processes to engage sooner with other parties**

Another area where investment can potentially pay off is in the escalation process. For example, if a relationship with a customer or supplier is deteriorating, then flagging this early to senior management can enable a party to engage or take action to avoid the situation escalating into a dispute. This links to the theme of collaboration that we stressed in our [previous article](#) on the Global Pound Conference (GPC) event series findings.

However, getting escalation processes right is difficult in practice. It requires firms to put clear protocols in place to recognise when to escalate the issue, ensure that these are well understood, and instil a culture that recognises the benefits of preventative action and promotes consultation and the sharing of problems.

### **Some common catalysts for disputes**

- Change of ownership at a customer or supplier
- Financial distress at a customer or supplier
- Contracts ending or new contractual terms
- Changes in macroeconomic, political and regulation landscape
- Acquisitions, earn-outs and divestment
- Project delays and over-runs

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### 3. Undertake an early holistic case assessment

If a dispute is looking likely to occur, investing in a holistic early case assessment up front is money well spent. Parties often invest in a legal merits assessment – but while this is important it is actually only one component of a holistic assessment that would be of most value. Other areas examined should include:

- The potential financial impacts and linkage to the areas of complaint – if the restitution sought is money, then there's little point in chasing down a point of liability if no damages arises from it.
- Potential loss of relationship/reputation value.
- The results of the initial fact-find, a review of the dispute resolution options, and a merits assessment for each option.
- A realistic assessment of costs and returns. Where are resources best deployed to have the most value, and where should costs be tightly controlled?
- Even if the dispute is won, can the other party afford to pay? How long will it take to realise the value?

In essence, the aim should be to produce a business case for pursuing/defending the dispute that treats it like any other potential investment. The key throughout is to bring together a diverse range of viewpoints on the merits of the case, with the overall objective of creating a solid factual basis on which to take a commercial – as opposed to purely legal – decision on whether and how to proceed. A particular point to stress is the importance of relationship value: for example, if a firm has a global commercial relationship with the other party or does business with one of its subsidiaries, it may not be worth jeopardising this entire relationship because of a relatively minor legal dispute in one territory.



### 4. Share the lessons learnt

Finally, time and again we've seen firms fail to learn lessons from previous disputes, resulting in them ending up once again in situations similar to those they've been in before – sometimes even with the same parties. Employees leave, business carries on, wins are celebrated, and lost cases are often blamed on somebody who's no longer with the business. This can all fog the corporate memory and cause firms to repeat past mistakes.

To learn and retain lessons, firms should take time once a dispute is settled or finished to hold a debrief and reflect on how it could have either been avoided entirely or at least reduced. It also means keeping tabs on current disputes, and seeing if these bring any valuable lessons for other matters that are emerging or already in train. Crucially, all lessons learned should be fed into the building of a pre-dispute prevention process.

#### Who to contact?

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