

BRIEFING NOTE

Settlement of Commercial Disputes

- ***Why and How to Settle Commercial Disputes Successfully?***

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Introduction

Settlement. A word often on the minds of clients concerned with managing the cost of dispute resolution proceedings, the commercial relationship between the parties and the uncertainty of a court's or tribunal's decision. Yet, it is not often on the top of the minds of legal advisers.

Aligned with our clients, settlement is always on the top of our minds. In this briefing note, we will discuss the benefits of settlement as well as the strategies for a successful settlement.

Why Settle?

Settlement ensures certainty of outcome. Settlement takes out the risk of having a judgment or award go completely against the party, as well as the risk of having a positive judgment or award thwarted by enforcement difficulties.

Attempting settlement, even when a settlement is not ultimately achieved, also has its benefits. Parties who make an offer to settle hedge against adverse cost outcomes. Where a party has made a settlement offer that is rejected by the other party and the court or tribunal subsequently decides that the other party should receive an amount less than the settlement offer, then the other party would be liable to the offering party for the cost incurred from the expiry of the settlement offer to the judgment or award date. Therefore, it would be in the best interest of parties to ascertain the strengths and weaknesses of their cases objectively with their legal advisors so as to at least attempt a commercial settlement of their dispute.

When to Settle?

Parties may choose to settle at various stages of the dispute resolution process.

The earliest point of time for settlement is prior to the commencement of formal proceedings. This is suitable for disputes between sophisticated commercial parties both of whom already have good knowledge of the strengths and weaknesses of their cases.

The next opportunity for settlement, and probably the more common points of time for settlement, is after the commencement of formal proceedings and after the close of pleadings. This is because the pleadings would have disclosed the issues in dispute. Parties would then be able to undertake an objective assessment of the merits of their case with legal advisers to determine the potential court or tribunal decision and therefore the optimal

settlement band. Obviously, the earlier a reasonable settlement offer is made, the more cost benefits the offering party would stand to enjoy.

The final point of time for settlement is before or just after the hearing. Parties usually settle at this stage if witnesses may not perform, or had not performed, well at the hearing. Even the strongest of cases may collapse like a house of cards in circumstances where a party has a weak witness. Often at this stage, it is not so much as to control the cost of proceedings as it is to hedge against an adverse judgment or award.

How Much to Settle?

Whilst it is an inherent human trait to attempt to 'get more' (or 'pay out less'), parties should recognise that a good settlement amount would often be a number that both sides are unhappy yet willing to live with. If parties go into settlement with an objective of extorting as much as possible from the other side, then it is unlikely that there will be any success in settlement. Further, it is unlikely that an unrealistic settlement offer (i.e., one that is too low and the court or tribunal ultimately decides on a much higher amount) will help in managing the cost of the dispute resolution process.

How We May Assist

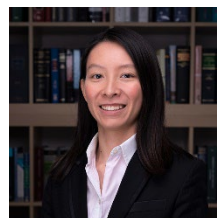
Settlement is on top of the minds of our lawyers. We do not believe in racking up legal fees. Instead, we believe that a positive outcome of every dispute resolution process should be one that is cost effective and commercially sensible for our clients. To this end, we are proactive in recommending settlement parameters for our clients at appropriate junctures of the process. If you would like to learn more about our settlement strategies, please do not hesitate to contact us.

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