

Complaints and Dispute Resolution Procedure



Complaints and Dispute Resolution Procedure

Should you have any complaint or wish to raise a dispute in relation to the Services or any other matter in connection with your Contract or dealings with ClearBank, where applicable you agree to raise such complaint or dispute in accordance with our Customer Complaints Policy set out in the Knowledge Centre and any complaint or dispute raised by you will be dealt with in accordance with our Customer Complaints Policy.

1. If the complaint or dispute is not resolved under the Customer Complaints Policy, or falls outside of it, the following process applies:
 - 1.1.1 if any dispute arises out of or in connection with this Agreement or its formation, the directors or other senior representatives of the parties, with actual authority to settle the dispute, will, within 7 Business Days of a written request from one party to the other, meet in London at our offices, or at such other place or in such other manner as may be agreed, in a good faith attempt to resolve the dispute ("**First Meeting**");
 - 1.1.2 if the dispute is not wholly resolved at the First Meeting, the parties, before concluding the First Meeting, will agree the issues that remain in dispute between the parties and agree which ADR Procedure will be used to determine an outcome for the dispute. Where no agreement can be reached by the parties, we will engage a CEDR representative to determine the appropriate ADR Procedure and confirm to you the selected ADR Procedure within 5 Business Days from the day on which the First Meeting was held;
 - 1.1.3 following the First Meeting, we will, within 7 Business Days:
 - 1.1.3.1 make a without prejudice written offer of settlement of the dispute (the "**First Offer**");and
 - 1.1.3.2 serve an ADR Notice.
 - 1.1.4 subject to clause 1.1.5, any First Offer must be accepted or rejected by you in writing to us;
 - 1.1.5 where the First Offer is accepted by you in writing, the dispute will be finalised on that basis and in accordance with the terms of the First Offer and the ADR Notice will expire;
 - 1.1.6 where the First Offer is not accepted but not rejected in writing before the expiration of 5 Business Days from the Business Day on which the First Offer was served, the dispute will be deemed to be settled finally on the terms of the First Offer and the ADR Notice will expire;
 - 1.1.7 where the First Offer is rejected in writing before expiration of 5 Business Days from the day on which the offer was served, the ADR Notice will come into effect and the parties will abide by its terms;
 - 1.1.8 within 5 Business Days of the First Offer being rejected in accordance with 1.1.7, we will write to you confirming that the ADR Procedure identified in the ADR Notice will commence as soon as practicable and making at least three suggestions as to choice of appropriately qualified independent persons who could serve as Appraiser/Conciliator/Mediator, and specifying the venue (the cost of which will be met by us) and timing of the Case Appraisal, Conciliation or Mediation. ("**Second ADR Notice**");
 - 1.1.9 within 5 business days of receipt of the Second ADR Notice you must write to us and identify the Appraiser/Conciliator/Mediator you have chosen from the options identified by us and confirm that the venue and timing specified by us is suitable or propose alternative dates and

venues for the ADR Procedure (and proposals as to the payment of the costs of that venue) for our approval, not to be unreasonably withheld ("**ADR Counter Proposal**");

- 1.1.10 where no written response to the Second ADR Notice is received by us within 5 Business Days of service of the Second ADR Notice, the ADR Procedure will end and the matter will be deemed to be finally settled on the terms specified in the First Offer;
 - 1.1.11 within 2 Business Days of receipt of the ADR Counter Proposal, we will either accept the suggestions made by you in the ADR Counter Proposal or refer the positions of both parties to a CEDR representative who will decide any outstanding issues;
 - 1.1.12 once the details of the timing, venue and identity of the Appraiser/Conciliator/Mediator have been agreed or ascertained, the chosen ADR Procedure will be co-ordinated by a CEDR representative unless the parties otherwise agree;
 - 1.1.13 both parties must act in good faith during the attempted resolution of the dispute and the ADR Procedure and must genuinely and with utmost good faith seek to finally resolve the dispute using the ADR Procedure;
 - 1.1.14 if the dispute does not settle as a result of the ADR Procedure, either party may proceed with litigation. Both parties agree that, for the purposes of any such litigation, the First Offer will be considered as a without prejudice offer save as to costs and that it may only be considered by a court determining orders as to costs in such litigation;
 - 1.1.15 where the dispute does settle as a result of the ADR Procedure, that settlement will finally dispose of the dispute unless the ADR Procedure was agreed only in respect of part of the dispute. In that case, either party may proceed with litigation in relation to the part of the dispute not disposed of by the settlement; and
 - 1.1.16 where the dispute, or part of it, settles as a result of the ADR Procedure and the First Offer would have been a better result for you had you accepted the First Offer, then you must reimburse us for all costs of the venue, any CEDR costs and the costs of the Appraiser/Conciliator/Mediator otherwise payable or paid by us and upon production of an invoice from us to you. Where the parties cannot agree on the issues in this clause 1.1.16, such matters will be determined finally by the relevant Appraiser/Conciliator/Mediator.
2. Except for each party's right to seek interim or interlocutory relief, neither party may commence any court proceedings, litigation or arbitration in relation to any dispute arising out of this Agreement or its formation until it has attempted to settle the dispute in accordance with this clause, provided that the right to issue proceedings is not prejudiced by a delay by either party.
 3. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
 4. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

"ADR Counter Proposal"	has the meaning given to it in clause 1.1.9;
"ADR"	means alternative dispute resolution involving ADR Procedures;
"ADR Notice"	means a notice in writing to confirm that the ADR Procedure selected in accordance with this Agreement will commence as soon as practicable and includes details as to the venue in London, choice of Appraiser/Conciliator/Mediation and timing of that ADR Procedure;
"ADR Procedure"	means one of, or a combination of, Mediation, Conciliation and Case Appraisal;
"Agreement"	means the agreement into which this Complaints and Dispute Resolution Procedure is deemed to be incorporated by reference.
"Arbitration"	means the process where an Arbitrator hears evidence from the parties and issues a decision by which the parties agree to be bound. The rules of the arbitration will be set by the Arbitrator;
"Arbitrator"	means a neutral person or panel of neutral persons, not aligned to any party, who is an expert in the field in which a dispute has arisen or a lawyer and who is appointed by the parties or CEDR to arbitrate a dispute between the parties;
"Business Day"	means a day, other than Saturday, Sunday or public holiday in England (or, if applicable, in Jersey), when banks in London (or, if applicable, in Jersey) are open for business;
"Case Appraisal"	means a process where the parties make written submissions to the Case Appraiser and agree to be bound by the decision made by the Case Appraiser. Exceptionally, the parties can agree, if the Case Appraiser consents, to submissions being made orally before the Case Appraiser;
"Case Appraiser"	means a neutral person, not aligned to any party, who is an expert in the field in which a dispute has arisen or a lawyer and who is appointed by the parties or CEDR to resolve a dispute between the parties;
"CEDR"	means the Centre for Effective Dispute Resolution located at 70 Fleet Street, London, EC4Y 1EU;
"Conciliation"	means the process where a Conciliator listens to both parties about the strengths of their case, either privately or with the other parties, and actively suggests a compromise which, in the view of the Conciliator, fairly addresses the dispute. The Conciliator may provide legal advice to either party and thereby encourage settlement by highlighting weaknesses or strengths of each party's case. If the Conciliator's view is accepted by the parties, they will execute a settlement deed to reflect that view;
"Conciliator"	means a neutral person, not aligned to any party, who is an expert in the field in which a dispute has arisen or a lawyer and who is appointed by the parties or CEDR to conciliate a dispute between the parties;
"Mediation"	means the process where a Mediator actively assists the parties in dispute to resolve their differences and achieve a negotiated settlement. The Mediator will not provide legal advice to either party but may encourage settlement by highlighting weaknesses or strengths of each party's case. If a negotiated settlement is reached, the parties will execute a settlement deed to reflect its terms;
"Mediator"	means a neutral person, not aligned to any party, who is an expert in the field in which a dispute has arisen or a lawyer and who is appointed by the parties or CEDR to mediate a dispute between the parties;
"Second ADR Notice"	has the meaning given to it in clause 1.1.8;

Complaints and Dispute Resolution Flowchart

Provided as a reference tool, not as part of the Agreement

