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LITIGATION AND DISPUTE RESOLUTION

Dispute Resolution for Consumers

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European legislation will introduce options for Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) for the resolution of consumer disputes.

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Customers living in the EU are often wary of purchasing goods and services from sellers located in other Member States, due to concerns surrounding their consumer rights and the difficulty they may encounter should a dispute with the seller arise following the purchase of goods/services. Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes are two pieces of legislation that have been introduced to in an effort to address such concerns.

The free movement of goods and services is a fundamental principle of the European Union. Inequalities in levels of consumer protection and dispute resolution mechanisms available to EU citizens are a barrier to cross border trade in the EU. This EU legislation aims to standardise alternative dispute resolution mechanisms available to EU consumers and to promote awareness of the availability of such mechanisms, thereby boosting consumer confidence in purchasing goods and services from sellers located in other Member States. The main benefit of using alternative dispute resolution is that it is generally more flexible, less complicated and less expensive than going to court. Any measure to improve consumer confidence is to be welcomed, but this legislation imposes obligations on Member States, ADR entities and traders.

The Legislation

The Directive on alternative dispute resolution for consumer disputes (the ADR Directive) and the Regulation on online dispute resolution for consumer disputes ("the ODR Regulations) both came into force in July 2013. The ADR Directive, which has to be transposed into national law by 9 July 2015, is applicable to all goods and services sold by traders to consumers. The ODR Regulation, which is directly applicable to traders from 9 January 2016, is applicable to online sales only.

Meaning Of Trader

For the purposes of the Directive and the Regulation, a Trader is a seller e.g. person, company, partnership who is engaged in selling goods/services in the course of their business.

The ADR Directive

The ADR Directive provides for the establishment of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution to a dispute between a trader and a consumer. The ADR Directive does not provide for disputes initiated by a trader or disputes between traders.

As at the time of writing, the Directive does not stipulate that any proposed solution will be binding on the trader.

There is no obligation on either party to participate, however if the parties choose to do so, each party to the

dispute is entitled to express its point of view, to receive the arguments and evidence provided by the other party, including expert reports and is entitled to submit their comments on same. The ADR entity must issue an award in writing setting out the reasons for its findings. The award must be made available within ninety days of the receipt of the complaint.

The ODR Regulation

The ODR Regulation applies to ADR disputes arising from online sales or service contracts between a consumer and a trader and provides for the development of an Online Dispute Resolution platform which shall be available to consumers and traders.

The platform will consist of an interactive website for consumers and traders seeking to resolve cross-border disputes. The complaint together with documents relevant to the complaint may be filed online. The complaint will be forwarded to the respondent trader and once the ADR entity is agreed, to the ADR entity. The ADR entity must conclude the ADR dispute procedure within ninety days.

Obligations of the Trader

The Directive does not oblige traders to use ADR in disputes with consumers. It is however open to each Member State to introduce legislation that goes beyond the minimum legal requirements of the Directive.

Traders will be obliged to inform consumers about ADR entities/schemes which cover the trader's sector and whether or not the trader subscribes to those schemes. If a trader is unable to resolve a consumer's complaint, he must provide specific information to the consumer about an appropriate ADR provider who could handle the dispute, irrespective of whether the trader is obliged or intends to use the ADR provider. He must also inform the consumer whether or not he intends to use the ADR provider. Traders engaging in online sales or service contracts and on online marketplaces established within the EU must provide a link to the ODR platform on their websites.

The Directive and Regulation provide that the cost of the ADR/ODR procedures is either free of charge or available at a nominal fee for the consumer, so it may be the case that the cost of the dispute resolution procedure will be passed to the trader.

What does this mean for your business?

Failure of the trader to comply with the obligations will attract a penalty and each Member State shall determine the rules on penalties applicable to infringements. The full implications of the legislation for traders are, at the time of writing, uncertain as Member States have discretion to introduce legislation that goes beyond the minimum legal requirements of the Directive. Member States have no discretion in respect of the provisions of the ODR Regulation which comes into effect in July 2015 and so steps should be taken now by your business to implement the infrastructure necessary to ensure compliance with the legal obligation to provide ODR information to consumers.

About the Author