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LITIGATION AND DISPUTE RESOLUTION

Mediation Act 2017

by

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7th November 2017 | by

The Mediation Act 2017 (“the Act”) was signed into law on 2 October 2017 and is likely to come into force in December 2017.

What is mediation?

Mediation is a confidential, voluntary process in which an independent, neutral mediator assists two or more parties to a dispute to work towards a negotiated settlement of their dispute, with the parties retaining control of the decision as to whether or not to settle and on what terms.

Overview of the Mediation Act 2017

The objective of the Act appears to be to promote the resolution of disputes through mediation as an attractive alternative to court proceedings. Use of mediation could result in;

- reduced legal costs;
- earlier resolution of disputes; and
- less stress for parties to court proceedings.

What is the role of the mediator?

The mediator’s primary role is that of an impartial, neutral facilitator who assists the parties towards conciliation, negotiation and agreement. The mediator may, at the request of the parties, make proposals as to how a dispute might be resolved but the parties alone decide whether they will accept any such proposals.

What is the role of the solicitor and barrister?

The Act introduces a requirement for solicitors and barristers, including in-house solicitors providing legal services, to advise their client to consider mediation as a means to resolve any dispute that comes within the scope of the Act, in advance of issuing court proceedings. A solicitor is obliged to advise their client in relation to the advantages and benefits of mediation and to provide the client with information in respect of mediation services available.

As mediation must now be considered prior to the institution of court proceedings, it may be necessary for more detailed investigations to be conducted by solicitors at the outset of any dispute and for the parties to obtain expert advice at an earlier stage in the dispute process, to facilitate a mediation taking place.

Is it compulsory for parties to engage in mediation?

The Act does not compel parties to participate in the mediation process but the Court may have regard to a party’s refusal to engage in mediation, where it is considered unreasonable, when awarding costs in the proceedings.

Conclusion

Mediation has been successfully used as an alternative dispute resolution mechanism in Ireland for years.

The Act encourages, but does not compel, parties to resolve their difficulties through mediation, with the aim of reducing legal costs and resolving disputes in a more efficient manner.

It remains to be seen what impact the Act will have on the dispute resolution landscape in Ireland.

About the Author