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LITIGATION AND DISPUTE RESOLUTION

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# Mediation Bill 2017

by **lk-shields**

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The much anticipated Mediation Bill 2017 has been published and was presented in the Dail last week, on 9 February.

The Bill provides a legal framework for the key concepts and formalities of mediation. It incorporates many of the recommendations made by the Law Reform Commission in its 2010 report entitled "Alternative Dispute Resolution: Mediation and Conciliation".

The Bill aims to promote mediation as an attractive alternative to court proceedings, in terms of time, costs, resources and the avoidance of acrimony. It is also a response to the growing popularity in the use of mediation as a collaborative process and means of resolving disputes.

## The Mediation Process

Part 2 of the Bill deals with the mediation process in general, setting out many of its key characteristics; voluntariness, confidentiality, the right of the parties to legal advice, and the right of the parties to walk away from the mediation at any time. It also provides that the parties and the proposed mediator shall prepare and sign a document known as an "Agreement to Mediate" setting out the formalities of the mediation including the manner in which it will be conducted, fees and costs, place and time of the mediation, confidentiality and termination. It is important to note that the signing of this Agreement will serve to stop the clock in terms of any limitation period under the Statute of Limitations until thirty days after a mediation settlement is signed or the mediation is terminated, whichever occurs first. This is an incentive to actively engage in mediation in circumstances where the claimant will not be prejudiced by any lapse of time should the mediation prove unsuccessful and a choice is made to subsequently initiate court proceedings.

The Bill provides that it is for the parties themselves to determine if and when a mediation settlement has been reached between them and whether or not the mediation settlement is to be enforceable between them. Any settlement arrived at between the parties shall have the same effect as a contract unless it is expressly stated to have no legal force until incorporated into a formal legal agreement or contract.

## Obligations for Solicitors

Most notably, Part 3 of the Bill introduces a requirement on solicitors and barristers, including in-house solicitors providing legal services, to advise their clients to consider mediation as a means of resolving their dispute. A solicitor must inform a client of the advantages and benefits of mediation, and provide the client with information in respect of the mediation services available as well as providing the names and addresses of persons providing those services. If the client chooses the option of court proceedings, the originating document by which those proceedings are instituted must be accompanied by a statutory declaration sworn by the solicitor that they have performed their obligations in relation to the client. Failure to do so will result in the adjournment of the proceedings for such period as the court considers reasonable to allow the solicitor to comply with his or her obligations.

It is also noteworthy that where a party refuses to engage in mediation, a Court may have regard to such a

refusal (where it is considered unreasonable) when awarding costs of the proceedings.

A link to the Mediation Bill 2017 can be accessed here: [Mediation Bill 2017](#).

**If you would like any further information, please contact Michael Kavanagh at [mkavanagh@lkshields.ie](mailto:mkavanagh@lkshields.ie) or Ciara Smyth at [csmyth@lkshields.ie](mailto:csmyth@lkshields.ie)**

## About the Author