

Contracts: Breaking up is never easy...

11 February 2020

Contract termination checklist

-
- Assess the position** - Including whether you have grounds to terminate, and, if so, on what basis. The consequences of getting it wrong can be serious. Terminating without a right to do so may well amount to a repudiatory breach, which the counterparty could accept and then sue for damages. Terminating on the wrong basis may rule out valuable claims or counterclaims.
-
- Consider whether termination is the best commercial option** - In some circumstances, even if the counterparty is in breach, it may make better commercial sense for you to affirm the contract (e.g. where the counterparty is one of a limited number of suppliers of particular goods or services) or seek a variation.
-
- But don't take too long** - You'll have a 'reasonable' period to act, which will depend on the nature of the contract and when your contractual obligations are due to be performed. If you wait too long before acting, you may be held to have affirmed the contract, and to have lost the right to terminate. Consider serving a reservation of rights letter or notice where appropriate.
-
- Take legal advice as appropriate** - It's best to be sure of your position before acting.
-
- Communicate position/decision to relevant groups, departments or individuals internally** - Anyone who deals with the counterparty in respect of the contract concerned should be informed of the position, to prevent them inadvertently taking any action which could be construed as an affirmation of the contract.
-
- If it's a remediable breach** - Consider providing a cure period.
-
- If a breach is time sensitive** - Consider serving a notice making time of the essence.
-
- Check the contract provisions regarding service of notices** - You should strictly adhere to any contractually prescribed regime to ensure service of any termination notice is effective. If there has been a change of address from that specified in the notice provisions (be that a physical address or an email address) consider serving more than one notice, to both the address set out in the contract and a new known address or addresses.
-
- Think about provisions which will survive termination** - In particular those relating to confidential information and intellectual property, and any obligation to destroy copies in your possession or return the same.
-
- Consider mitigation** - Even if there has been a repudiatory breach of contract this does not affect the duty of an innocent party to take reasonable steps to mitigate its loss. Consider practically what you need to do to try and mitigate losses you have suffered or will suffer as a result of the breach.

Dispute Resolution

With an increasingly globalised and fast changing environment, disputes are an inevitable part of business. Not only can we help resolve disputes once they arise but we also work with our clients to reduce the risk of litigation in the first place.

We have a highly experienced team specialising in commercial dispute resolution, including litigation, arbitration (international and domestic) and mediation. We have litigated cases at every level in the English courts through to the Supreme Court and the European Court of Justice. We are frequently involved in ground breaking and high profile cases where the context requires significant expertise and industry knowledge. Nonetheless much of our work concerns resolving problems efficiently and effectively with the minimum of fuss.

Our expertise

We have particular expertise of disputes in the following areas:

- Commercial
- Company and Shareholders
- Insolvency
- Joint Ventures
- Partnerships and LLPs
- Professional Services
- Regulatory & Investigations
- Trusts

Our team encompasses lawyers with experience in a full range of sectors. Our specialists predominantly cover the following sectors:

- Advertising & Marketing
- Financial Services
- Law Firms & Professional Services
- Manufacturing & Engineering
- Media & Entertainment
- Retail, Fashion & Hospitality
- Sports Business
- Technology
- Professional Services

Our approach

We adopt your problem as if it were our own and work with you to identify and implement the most practical and effective solution. Clients regularly report that this is what sets us apart from our competitors.

Our firm is large enough to handle major projects whilst remaining of a size that ensures the work we do is treated with priority and importance, delivering the service clients expect. The team also work in integrated client service teams across specific legal disciplines in order to provide a total, seamless service.

International

The nature of our clients' businesses means that cross border capability is often critical. We are well versed in working with our clients to find solutions to their legal and business challenges – including working internationally.

We can provide legal services to meet your needs in the UK and indeed any English law jurisdiction. We provide our clients with global support for their legal requirement through the use of our international desks and by leveraging our extensive network of law firms in other jurisdictions.

*"They punch way above their weight" and they do
"fantastic litigation work"
Chambers & Partners*

For more information:



Mark Lim
Head of Dispute Resolution

+44 (0) 20 7074 8186
mark.lim@lewissilkin.com



Fraser McKeating
Managing Associate

+44 (0) 20 7074 8199
fraser.mckeating@lewissilkin.com