

Cross-border dispute resolution

Dispute in business is inevitable, and as globalisation becomes increasingly rapid and the business world becomes smaller, cross-border disputes are becoming an everyday occurrence.

Disputes can arise from almost any area of business – intellectual property related disputes such as copyrights, patents and trademarks; contract issues and employment disputes. Throw in conflicting jurisdictions and different legal frameworks and you have a complex situation littered with potential pitfalls. However, despite the inevitability, the extent to which any cross-border disputes spread and the extent to which they affect your business, reputation and profit, can be controlled. By consulting experienced and skilled legal experts,

disputes may not always be avoided entirely, but they can be navigated effectively and a solution beneficial to all involved is more likely to be settled.

Over the next few pages, Lawyer Monthly speaks to legal professionals highly skilled and experienced in navigating the challenges that arise within cross-border disputes. Here, they discuss with us how they approach those challenges, the main types of disputes they deal with and the other legal implications in such cases. **LM**

Cross-Border Dispute Resolution Ireland

Continuing our focus on cross-border dispute resolution, *Lawyer Monthly* speaks to John O'Riordan, partner in the Litigation and Dispute Resolution department of one of Ireland's leading law firms, Dillon Eustace. Dillon Eustace was set up 20 years ago and focuses on financial services, banking and capital markets, M&A, litigation and dispute resolution, real estate and taxation.

John began: "In my role as a partner in the Litigation and Dispute Resolution department, the most common types of disputes/issues I deal with are in the areas of commercial and financial services litigation, maritime and transport law and corporate recovery.

"In terms of cross-border dispute resolution, earlier this year, I was involved in a case in which Danish Polish Telecommunication Group I/S ("DPTG") ultimately reached a settlement with Telekomunikacja Polska SA ("TPSA") in a dispute which arose out of the construction of an optic telecommunication system in Poland."

John continued: "The dispute involving a Danish and a Polish company had been the subject matter of arbitration proceedings in Austria for over ten years.

"As part of these proceedings in November 2010 a partial arbitration award was made by the Austrian arbitration tribunal who heard the dispute in favour of DPTG for almost €270 million. This award was followed by an application by DPTG seeking recognition and enforcement of the award in a number of jurisdictions throughout Europe, including Ireland.

"Similar applications for recognition and enforcement were brought by DPTG in England, France, Germany, Netherlands and Poland."

John continued: "The application in Ireland was made pursuant to Article 35(1) of the UNCITRAL Model Law and Section 8 of Ireland's Arbitration Act 2010 ("the Act"). The introduction of the

Act in Ireland has helped assist parties in the process of enforcing foreign arbitral awards. The Irish Commercial Court has also significantly reduced delays in the court system for disputes of a commercial nature.

"TPSA challenged the recognition and enforcement of the award alleging that it had not been able to present its case, that the composition of the arbitral tribunal did not accord with the parties' agreement or Austrian law, and that recognition and enforcement would be contrary to Irish public policy.

"TPSA also argued that the Irish High Court should adjourn the proceedings pending the final determination of the Austrian Court which was, at that time, considering a challenge to the award by TPSA. DPTG argued against an adjournment but that if an adjournment were to be granted then TPSA should be ordered to put security in place.

"In October 2011, the Irish Commercial Court, in a landmark decision, ordered an adjournment of the application for recognition and enforcement of the award pending the outcome of the Austrian action to set aside the award, however the court did order TPSA to put up initial security of €1.5million.

"Any company carrying on business in a foreign jurisdiction, particularly one in which they are unfamiliar with the legal system runs the risk of falling foul of that system. To minimise these risks companies should insist on a clause in their contractual agreements that ensures that disputes are determined in a venue in which

they are comfortable, either by an arbitrator or through the courts."

John concluded: "This case is a good example of how, when things do go wrong, arbitration and the court system can work together to provide protection for companies that end up involved in a cross-border dispute." **LM**



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