

# Litigation

## Prevention and effective solution

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## Reasons for avoiding litigation/arbitration

- costs
- bad for business relationship
- PR and reputation issues
- stress

## **How to avoid disputes**

- a clear contract
- management of contractual obligations
- securing instruments

## **How to avoid litigation when dispute arises**

- analysis of the position
- negotiations

## Contract

- ...with a reliable partner
- in writing, preferably standard
- general business conditions

## Arbitration clause:

- mandatory in writing
- can be included in the contract or agreed ex post when a dispute arises

If no arbitration clause – jurisdiction of courts

## Relative advantages and disadvantages of arbitration

### Advantages

- less expensive?
- faster?
- public not allowed
- jurisdiction of courts is (almost) excluded
- possibility to agree on procedural rules
- less formal

### Disadvantages

- no appeal
- limited scope of evidence

## Management of contractual obligations

- internal knowledge of the contract
- internal responsibilities
- cooperation between the business and legal department
- document management

## Security

- motivates counter-party to fulfil its obligation voluntarily
- alternative fulfilment of the claim

Usually instruments of an economical and legal nature

## Economical

- verification of the credibility of the business partner
- partial payment in advance
- escrow account
- notarial custody
- letter of credit
- bill of exchange

## Legal

### Preventive:

- contractual penalty
- reservation of the ownership title
- security assignment of a right

### Participation of third parties

- suretyship
- bank guarantee

### Other

- right of pledge
- acknowledgment of debt (notarial deed)
- right of retention

## Management of receivables and debts

### Deadlines

- insolvency, liquidation
- statute of limitations

### Offsets

### Assignment of receivables

When dispute arises...

Analysis of the position

Settlement negotiation

- anger management
- win-win solution

## Specific features of trade with foreign entities

- choice of law clauses
- prorogation clauses

## Preparation for litigation

- analysis of risks
- proofs
- preliminary measures
- an in house or external lawyer ?

## Drafting lawsuit

- extensive cooperation with an attorney
- require from your attorney the explanation of your position
  - weak and strong points of case
  - strategy

## **Milestones of the proceedings in courts of first instance**

- lawsuit
- first counter-party submission in merits
- first hearing
- last hearing
- decision

## Appeals

### Extraordinary appeals:

- Appellate review
- Motion for a new trial
- Nullity plea

### Constitutional complaint

## **Enforcement of an adjudicated receivable**

- enforcement of decisions of Czech courts abroad
- enforcement of decisions of foreign courts in the Czech Republic
- enforcement of arbitral awards

**Thank you for your attention**

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