**LAW SOCIETY OF IRELAND**

**PRECEDENT ‘THREE TIER’ADR CLAUSE**

(for use where the Arbitration Rules of the Law Society are NOT being adopted)

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof (a ‘Dispute’) shall be settled in the following manner:

1. Amicable Settlement

A good faith effort to resolve the Dispute amicably shall be made by the senior representatives of the parties within 10 Business Days from the date of receipt by one party from the other of written notice requesting resolution of the Dispute.

1. Mediation

Any dispute arising under this Clause, if not resolved through amicable settlement in accordance with sub-clause (i) hereof, shall be referred to an independent mediator to be agreed between the parties. If a mediator cannot be agreed upon by the parties within 5 Business Days of any party’s written request to agree a mediator, a mediator shall be nominated on the application of any of the parties by the President for the time being of the Law Society of Ireland or should the said President be absent, unwilling or unable to do so by the next Senior Officer of the Society who is ready, willing and able to make the nomination. If the parties cannot resolve the Dispute through mediation within 15 Business Days from the date the mediator is agreed or 25 Business Days from the date of the application to the President of the Law Society for the nomination of a mediator (whichever is the earlier), then the provisions of sub-clause (iii) of this Clause shall apply.

1. Arbitration

Any Dispute arising under this Clause, if not resolved through amicable settlement or mediation in accordance with sub clauses (i) or (ii) hereof, shall be decided by an arbitrator to be agreed between the parties. If an arbitrator cannot be agreed upon by the parties within 5 Business Days of any party’s written request to appoint an arbitrator, an arbitrator shall be appointed on the application of any of the parties by the President for the time being of the Law Society of Ireland or should the said President be absent, unwilling or unable to do so by the next Senior Officer of the Society who is ready, willing and able to make the appointment.

[PTO]

Comments:

*When adopting an arbitration clause parties should have regard to the provisions of the Arbitration Act, 2010 including the powers conferred by the Act on both the High Court and the arbitral tribunal and should inter alia consider whether the powers, rights and obligations conferred by the Act need to be varied and whether, for example, any special provisions need to be made, for example, in relation to the following:*

1. *the number of arbitrators (Article 10 of the Model Law / Section 13 of the Act) ;*
2. *security for costs (Article 17 of the Model Law / Section 19 of the Act);*
3. *the place of arbitration (Article 20 of the Model Law - international arbitrations);*
4. *the language to be used in the arbitration proceedings (Article 22 of the Model Law -international arbitrations).*
5. *the requirement for the arbitral tribunal to give reasons for its award (Article 31 of the Model Law)*
6. *discovery (neither the Act nor the Model Law expressly provides for discovery);*
7. *the adoption of rules of procedure.*

\*An alternative instead of (iii) in the precedent clause would be to provide for expert determination or litigation instead of arbitration. In the case of expert determination the clauses under the Expert Determination section of the ADR Committee webpage may be amended as appropriate (see that section also with regard to the appropriate use of expert determination).

\*In relation to limitation periods and mediation, it should be noted that the disregarding of the period of time concerning mediation in respect of a limitation period specified by the Statute of Limitations runs from the day on which an agreement to mediate is signed (as defined by section 7 of the Mediation Act 2017). See also section 18 of the Mediation Act 2017.