Mediation Bill 2017

The much anticipated Mediation Bill was first presented to Dáil Éireann on 9 February 2017. The Bill is currently in the final stages before the Seanad, having been passed by the Dáil on 13 July 2017.

The Bill aims to promote mediation as an alternative to court proceedings in resolving disputes. The Bill excludes certain disputes from its realm including but not limited to arbitration matters, certain disputes before the Workplace Relations Commission, judicial review proceedings and certain matters under Taxes Consolidation Act.

Solicitors' Obligations under the Bill

Part III of the Bill imposes a statutory obligation on practising solicitors to advise their clients of mediation prior to issuing proceedings. Every practising solicitor is obliged to provide their client with information on mediation services, including the names and addresses of persons who provide mediation services and the advantages of using mediation. Part III further provides that if a client of a practising solicitor declines to enter into mediation, the originating document by which proceedings are instituted must be accompanied by a statutory declaration that the solicitor has performed their obligations in accordance with the Bill. The Court will adjourn proceedings until said statutory declaration is furnished.

Agreement to Mediate

Part II of the Bill provides that if parties agree to engage in mediation, the parties and the proposed mediator must sign an “agreement to mediate”. This document will contain the following:

a) The manner in which the mediation is to be conduced;
b) The manner in which the fees and costs of the mediation will be paid;
c) The place and time at which the mediation is to be conducted;
d) The fact that the mediation is to be conducted in a confidential manner;
e) The right of each of the parties to seek legal advice;
f) The manner in which the mediation may be terminated.
From the date of signing the agreement to mediate, the time for bringing claims under the Statute of Limitations will be paused until 30 days after either a mediation settlement is signed by the parties and the mediator or the mediation is terminated, whichever first occurs.

If agreement is reached between the parties, Part III of the Bill provides that this settlement shall have the same effect as that of a contract between the parties except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement to be signed by the parties.

**Mediation Bill and the Courts**

Part IV of the Bill provides that a Court may, on application of a party involved in the proceedings or of its own motion where it considers it appropriate, invite the parties to the proceedings to consider mediation and may adjourn proceedings where agreement to mediate has occurred. If a party unreasonably refuses to consider mediation or fails to attend mediation then this may have adverse consequences when costs fall to be awarded by the Court.

From an insurer’s perspective, the enactment of the Mediation Bill should be welcomed. It should introduce greater certainty as the costs of mediation are not contingent on its outcome (unlike court proceedings). If the Bill achieves its aim of promoting mediation as the forum of choice for dispute resolution due to it being a less costly and less time consuming means of resolving disputes, insurers should see claims settling earlier and legal costs should be reduced as a result.

The above is a brief outline of the main provisions of the Mediation Bill. Given that the Bill is currently in the final stages before the Seanad, it may be enacted in the near future.

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For further information please contact:

**Sarah Conroy**
Partner
T: +353 (0) 1 536 9610
E: s.conroy@beale-law.com

**Karen Elliott**
Trainee Solicitor
T: +353 (0) 1 536 9610
E: k.elliott@beale-law.com