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COMMERCIAL DISPUTES **KNOW-HOW GUIDES**

REQUESTS FOR FURTHER INFORMATION

If a party considers that the other party's statement of case (legal pleading) has given insufficient information about the nature of its claim or defence then a formal request can be made that additional information or clarification is provided.

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REQUESTS FOR FURTHER INFORMATION

These requests are governed by Part 18 of the Civil Procedure Rules (“CPR”). A Part 18 request, or better known as a “request for further information”, will generally be made shortly after receiving the statement of case.

Part 18 requests are commonly used:

- to obtain details of the other party’s case so as to reduce surprise when witness statements are exchanged or at trial;
- to obtain admissions;
- to reveal weaknesses in the other party’s case;
- to clarify the other party’s case or limit the other party’s ability to depart from that case;
- to narrow the issues between the parties and so reduce the expense and length of trial.

It is a requirement that a Part 18 request should not be made solely to highlight the weaknesses of the other party’s case.

PROCEDURE FOR PART 18 REQUESTS FOR FURTHER INFORMATION

The procedure is:

- the preliminary request;
- the response to the preliminary request;
- if necessary, an application to court for an order to compel compliance with the preliminary request.

THE PRELIMINARY REQUEST

A written request is sent stating a date by which the response should be provided. The request has to be confined to only those matters which are reasonably necessary and proportionate to understand the case that has to be met. Usually, the request will be made by letter stating that it is sent under Part 18. It must not deal with anything other than the Part 18 request.

THE RESPONSE TO THE PRELIMINARY REQUEST

The response is usually also by letter. It should specifically state that it is a response to the Part 18 request and deal with no matters other than the response. The response may be an answer or an objection.

THE PART 18 ORDER

If the party making the preliminary request is not satisfied with the response, the court can be asked to make an appropriate order compelling compliance with the request. The application can be dealt with by the court by a “paper application”, that is without a hearing.

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IN WHAT SITUATIONS WILL A PART 18 PRELIMINARY REQUEST BE OBJECTIONABLE?

If the other party objects to answering a Part 18 preliminary request, or it considers that the time given to respond to the request was too short, it should inform the requesting party promptly - within the time limit stipulated in the letter. The preliminary request may, for instance, be objectionable because it is:

- not relevant to the issues in dispute;
- a 'fishing' request improperly used where the requesting party does not have evidence supporting its statement of case;
- a request purely as to the credibility of a witness;
- oppressive and disproportionate in terms of scope and costs.

THE COURT'S APPROACH TO APPLICATIONS FOR A PART 18 ORDER

In *Berezovsky v Abramovich* [2008] EWHC 1138, HHJ Mackie QC stressed that Part 18 requests should be dealt with in correspondence between the parties' solicitors "in terms aimed at securing compromise not at scoring points".

Only if any issues cannot be resolved in correspondence, should they be referred to the court and, preferably, dealt with at the first case management conference. The judge also encouraged parties to provide information even where they were not legally obliged to do so if this would save time and costs.

In *National Grid Electricity Transmission plc v ABB Ltd and others* [2014] EWHC 1555 (Ch) Roth J held that the majority of requests for information made by the claimant were "reasonable and proportionate". In doing so, he stated that CPR 18 had to be interpreted "in the light of the overriding objective" (the litigation process should be fair, swift and cost- efficient) and with the principle of open litigation in mind. He recognised that the information sought must relate to "any matter in dispute" and that, in this case, potentially relevant information was in the knowledge of only the recipient of the request.

STRATEGY

A Part 18 request can be a powerful tool to be used in extracting information from the other party. It may provide a more informed insight into the other party's case or exert pressure on the other party to provide a complete picture of its case. It may, however, also highlight the requesting party's line of inquiry and tactics generally and enable the other party to improve its case. A Part 18 request is best in circumstances where the requesting party knows that the other party is withholding information and this needs to be brought out into the open.

This is part of a series of practical know-how guides for those involved in commercial disputes whether the dispute has led to litigation or not. They provide basic information on a wide-range of disputes topics but are not a substitute for specific legal advice. For further guidance on the topic please contact Craig Deuchrass at craig.deuchrass@collyerbristow.com or on +44 (0) 7947 531962 or contact any member of the commercial disputes team.



CRAIG DEUCHRASS

Senior Associate

+44 20 7468 7265
+44 7947 531962
craig.deuchrass@collyerbristow.com



ROBIN HENRY

Partner - Head of Dispute Resolution Services

+44 20 7470 4429
+44 7943 503198
robin.henry@collyerbristow.com



JEFF ROBERTS

Partner

+44 20 7470 4441
+44 7831 27743
jeff.roberts@collyerbristow.com



STEPHEN ROSEN

Partner

+44 20 7468 7208
+44 7770 986494
stephen.rosen@collyerbristow.com



DAVID VAUGHAN

Partner

+44 20 7468 7232
+44 7808 870142
david.vaughan@collyerbristow.com



ROGER BILLINS

Consultant

+44 20 7470 4522
+44 7714 683080
roger.billins@collyerbristow.com



NICHOLA LEACH

Senior Associate

+44 20 7468 7209
+44 7793 168795
nichola.leach@collyerbristow.com



PETER PRATT

Senior Associate

+44 20 7468 7271
+44 7774 601576
peter.pratt@collyerbristow.com



GAVIN KRAMER

Senior Associate

+44 20 7468 7256
+44 7956 381277
gavin.kramer@collyerbristow.com



JEAN-MARTIN LOUW

Associate

+44 20 7470 4592
+44 7796 712840
jean-martin.louw@collyerbristow.com



ISOBEL MCNAUGHT

Associate

+44 20 7468 7359
+44 7947 532122
isobel.mcnaught@collyerbristow.com



RHIANNON THOMPSON

Associate

+44 20 7470 4443
+44 7734 048799
rhiannon.thompson@collyerbristow.com



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@COLLYER_BRISTOW



@COLLYER-BRISTOW-LLP



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