

## THE CALM BEFORE THE CONFLICT: RETHINKING DISPUTE PREVENTION IN NIGERIAN COMMERCE

### 1.0 Business Isn't War, Until It Is

In the bustle of transactions, joint ventures, and handshakes that define commercial life in Nigeria, one thing remains true: disputes rarely announce themselves.

A promising partnership today can turn litigious tomorrow. But what if businesses could build legal firewalls before the sparks even fly? What if the real work of dispute resolution begins long before a disagreement takes root?

This is the philosophy of **dispute foresight** - a strategy-focused, proactive approach that moves dispute management upstream. Rather than react when the house is on fire, Nigerian businesses must learn to build fire-resistant architecture. Not to avoid disagreement, but to *manage it before it combusts*.

### 2.0 The Business Case for Early Legal Engineering

For many organisations, legal planning starts after the conflict - a demand letter, counsel engagement, filing of court process and maybe, negotiation. But commercial disputes hardly just appear. They *evolve*. Like cracks in a foundation, the signs often show early. Pre-dispute planning is the process of identifying and insulating those stress points before they widen.

Consider this: every business decision carries risk. Every contract, every partnership, every shipment. Pre-dispute planning is simply risk literacy translated into legal preparedness. And for Nigerian businesses navigating a complex regulatory terrain, the cost of not planning can be catastrophic.

### 3.0 Core Pillars of Strategic Pre-Dispute Planning

#### 1. Negotiation-First Thinking

Before documents are even drafted, mindset matters. Organisations must be conditioned to view business relationships as *long games*. This means embracing a culture where negotiation is not seen as defeat, but as design - a way of shaping outcomes rather than responding to them.

Negotiation-first thinking involves training key staff to manage friction early, document resolution attempts properly, and avoid conduct that may sabotage future settlement possibilities.

#### 2. Precision in Contract Design

Many commercial disputes arise not from malice, but from **mismatch of expectation**. And the root cause? Vague or poorly tailored contracts. A well-drafted contract should not just state obligations —it should map out escalation paths, communication windows, and contingency scenarios.

From **force majeure** clauses that address regulatory volatility to dispute resolution clauses that stipulate escalation and dispute resolution mechanisms tailored towards the contract, not just copied and pasted. Contracts must be treated as *strategic tools*, not recycled templates.

#### 3. Choosing the Right Battleground

Litigation is not the only path - and often, it's not the best one. Nigerian businesses must learn to align dispute resolution methods with the **nature of the transaction, the personality of the parties, and the confidentiality demands of the deal**.

- **Arbitration** may be preferable in high-value, cross-border transactions where confidentiality and speed matter.



- **Mediation** offers flexibility for relational disputes where business continuity is essential.
- **Expert determination** may work best in technical areas like construction or infrastructure.

Rather than treating dispute resolution clauses as boilerplate, they should be **custom-engineered**. The question isn't just "Where will we go if there's a fight?" but "How do we want the fight to happen - if it must?" "Who do we want to resolve the fight that happens - if it happens?"

#### 4. Evidence Infrastructure

Disputes are decided not by truth, but by **proof**. Businesses that win disputes often begin gathering evidence long before the dispute exists.

- **Record retention policies** should be designed with legal timeframes in mind - not just operational convenience.
- Key decisions should be memorialized in writing, with clarity and context.
- **Correspondence protocols** should prevent loose or contradictory communications that may later be weaponized.

Even more crucial is **witness mapping**. When employees leave, so does their knowledge. Are there retention clauses and cost clauses in employment or engagement contracts of key individuals involved in transactions that bind them to future cooperation in exchange for bonuses in the event of a dispute.

#### 5. Periodic Legal Health Checks

Pre-dispute planning is not a one-off event. It requires **ongoing vigilance**. Businesses should conduct regular audits of their legal relationships - from customer contracts to supplier MOUs.

These "legal health checks" help organisations detect brewing tensions, ambiguous clauses, or lapses in compliance before they mature into formal



disputes. A quarterly one-hour check with legal counsel can prevent years of litigation.

#### 4.0 The Nigerian Lens: Why It Matters Even More Here

In a jurisdiction like Nigeria, where **judicial timelines are unpredictable**, and enforcement of judgments is often met with roadblocks, pre-dispute planning offers a much-needed form of risk buffering.

It ensures:

- Better cost management (through predictable dispute handling).
- Preserved commercial relationships (by keeping matters out of court).
- Enhanced investor confidence (through legally mature business practices).

More importantly, in a country where **informal relationships and reputational capital** still dominate business decisions, avoiding a courtroom battle can often mean keeping the doors open for future deals.

#### 5.0 Final Thoughts: The New Skillset for Business Survival

Dispute resolution is evolving. It's no longer about who has the toughest lawyer, but who had the better foresight. Nigerian businesses must begin to think like architects - designing not only for growth, but for resilience.

At **Smith and Partners LP**, we assist businesses across industries to **pre-empt conflict** through intentional contract structuring, policy design, staff training, and ongoing risk advisory.

If you're still planning for the worst only after it happens - you're already too late.

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