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| **General Nature of Commercial Relationships: Suppliers** | | **Notes** |
|  | 1. **Are the products/services themselves, commercial contract terms, regulatory context, or other factors involved highly technical or specialized?**   *Check if yes.* |  |
|  | * 1. **If litigated, would expert witnesses be essential?**   *Check if yes.* |  |
|  | * 1. **Could expert mediators/arbitrators be more efficient or useful?**   *Check if yes.* |  |
|  | 1. **Do your suppliers tend to have more bargaining power over you?**   *Check if yes, leave empty if you tend to have more bargaining power.* |  |
|  | * 1. **Are your suppliers generally large companies with substantial resources?**   *Check if yes. Write how many of your suppliers are smaller companies and how many are large companies in the Notes section to the right.* | *# smaller*  *# larger* |
|  | * 1. **Are there individual suppliers that represent a high proportion of total operating costs?**   *Check if yes.* |  |
|  | * 1. **Are the supplier relationships typically long-term?**   *Check if yes, leave empty if suppliers change frequently.* |  |
|  | * 1. **Are the suppliers specialized?**   *Check if yes, leave empty if the suppliers are commoditized.* |  |
|  | * + 1. **Are there few potential commercial alternatives to current suppliers?**   *Check if yes, leave empty if there are many alternatives to current suppliers.* |  |
|  | * + 1. **Are the switching costs to replace individual suppliers significant?**   *Check if yes.* |  |
|  | 1. **Do you have a sense of “investment” in any of the suppliers having knowledge of your business and needs?**   *Check if yes.* |  |
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| **General Nature of Commercial Relationships: Suppliers (cont.)** | | **Notes** |
|  | 1. **Are your suppliers geographically dispersed?**   *Check if yes, leave empty if your suppliers are local.* |  |
|  | * 1. **Are your suppliers located internationally?**   *Check if yes, leave empty if your suppliers are located domestically. Write any applicable countries in the Notes section to the right.* |  |
|  | * 1. **Are the courts and the application of the rule of law reliable where your suppliers are located?**   *Check if yes.* |  |
|  | 1. **Do your supplier relationships involve sensitive commercial information, trade secrets, or intellectual property?**   *Check if yes.* |  |
|  | 1. **Would public disclosure of a dispute disproportionately harm or benefit one side of the other?**   *Check if yes.* |  |
|  | 1. *Write your own checklist items here* |  |
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| **General Nature of Commercial Relationships: Customers** | | **Notes** |
|  | 1. **Are the products/services themselves, commercial contract terms, regulatory context, or other factors involved highly technical or specialized?**   *Check if yes.* |  |
|  | * 1. **If litigated, would expert witnesses be essential?**   *Check if yes.* |  |
|  | * 1. **Could expert mediators/arbitrators be more efficient or useful?**   *Check if yes.* |  |
|  | 1. **Do your customers tend to have more bargaining power over you?**   *Check if yes, leave empty if you tend to have more bargaining power.* |  |
|  | 1. **Are your customers generally larger companies with substantial resources?**   *Check if yes. Write how many of your customers are smaller companies and how many are large companies in the Notes section to the right.* | *# smaller*  *#larger* |
|  | 1. **Are there individual customers that represent a high proportion of total operating revenues?**   *Check if yes.* |  |
|  | 1. **Are the customer relationships typically long-term?**   *Check if yes, leave empty if customers change frequently.* |  |
|  | 1. **Is the product/service you provide highly specialized?**   *Check if yes, leave empty if the product/service you provide is commoditized.* |  |
|  | 1. **Are there few potential commercial alternatives to your product/service?**   *Check if yes, leave empty if there are many alternatives to your company.* |  |
|  | 1. **Are the startup costs to replace you as a product/service significant?**   *Check if yes.* |  |
|  | 1. **Do you have a sense of “investment” in any of your customers having knowledge of your business and needs?**   *Check if yes.* |  |
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| **General Nature of Commercial Relationships: Customers (cont.)** | | **Notes** |
|  | 1. **Are your customers geographically dispersed?**   *Check if yes, leave empty if your customers are local.* |  |
|  | * 1. **Are your customers located internationally?**   *Check if yes, leave empty if your customers are located domestically. Write any applicable countries in the Notes section to the right.* |  |
|  | * 1. **Are the courts and the application of the rule of law reliable where your customers are located?**   *Check if yes.* |  |
|  | 1. **Do your customer relationships involve sensitive commercial information, trade secrets, or intellectual property?**   *Check if yes.* |  |
|  | 1. **Would public disclosure of a dispute disproportionately harm or benefit one side of the other?**   *Check if yes.* |  |
|  | 1. *Write your own checklist items here* |  |
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| **History of Disputes** | | **Notes** | |
| 1. **What is your historical frequency of disputes?**   *Enter quantity in Notes section to the right.* | |  | |
| 1. **What is the typical dollar value of your disputes?**   *Enter quantity in Notes section to the right.* | |  | |
| 1. *Write your own items here* | |  | |
| 1. *Write your own items here* | |  | |
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| **History of Resolutions** | | **Notes** | |
| 1. **How many of the disputes were litigated to judgement?**   *Enter quantity in Notes section to the right.* | |  | |
| 1. **How many of the disputes were litigated then settled?**   *Enter quantity in Notes section to the right.* | |  | |
| 1. **How many of the disputes were settled through formal negotiations or discussions?**   *Enter quantity in Notes section to the right.* | |  | |
| 1. **How many of the disputes were settled informally?**   *Enter quantity in Notes section to the right.* | |  | |
| 1. **In how many of the disputes were you satisfied with the overall process?** (Not necessarily the outcome)   *Enter quantity in Notes section to the right.* | |  | |
| 1. *Write your own items here* | |  | |
| 1. *Write your own items here* | |  | |
| **ADR vs. Litigation** | | | **Notes** | |
|  | 1. **Is a “winner take all” solution preferable to a compromise?**   *Check if yes.* | |  | |
|  | 1. **Is there likely to be a legal principle or precedent at stake?**   *Check if yes.* | |  | |
|  | 1. **Is it important to maintain control over the outcome?**   *Check if yes, leave blank if maintaining control over the outcome isn’t high-importance for you.* | |  | |
|  | 1. **Is speed/timing of a resolution important to you?** Compare to the court docket in the most likely relevant jurisdiction(s).   *Check if yes.* | |  | |
|  | 1. **Is there a legal precedent or interpretation needed that will impact more than the immediate dispute and parties?** E.g. the interpretation of a relevant statute or regulation.   *Check if yes.* | |  | |
|  | 1. **Are there commercial opportunities that could be included in an ADR solution that would not be part of a litigated outcome?**   *Check if yes.* | |  | |
|  | 1. **Is discovery important to the resolution of the dispute?**   *Check if yes, leave blank if discovery isn’t expected to be needed or it is not expected to take much time.* | |  | |
|  | 1. **Does one party need discovery processes more than the other?**   *Check if yes.* | |  | |
|  | 1. **Is injunctive relief likely to be needed?**   *Check if yes.* | |  | |
|  | 1. **Is a local court order, an arbitral award, or a mediated settlement likely to be enforceable in this dispute?** Keep in mind New York Convention enforceability of arbitral awards and expanding the use of Singapore Convention on Mediation for mediated agreements?   *Check if yes.* | |  | |
|  | 1. **Would the opportunity to appeal be important in this dispute?**   *Check if yes.* | |  | |
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| **ADR VS. Litigation (cont.)** | | | **Notes** | |
|  | 1. **If litigated, would there likely be claims included that offer a windfall to one party?** E.g. punitive or treble damages.   *Check if yes.* | |  | |
|  | 1. *Write your own checklist items here* | |  | |
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| **Other Factors** | | | Notes | |
|  | 1. **Is it important to retain or maintain the commercial relationship(s) at stake?**   *Check if yes, leave empty if relatively unimportant.* | |  | |
|  | * 1. **Is that view essentially the same on both sides?**   *Check if yes, leave empty if you believe the importance is imbalanced.* | |  | |
|  | 1. **Are hybrid solutions like dispositive mini-trial on specific issues coupled with mediation/negotiation viable alternatives?**   *Check if yes.* | |  | |
|  | 1. **Is your attitude toward ADR generally pro?**   *Check if yes or open to discussion, leave empty if con. Elaborate in Notes.* | |  | |
|  | 1. **Do you believe the attitude toward ADR on the other side of the commercial relationship is generally pro?**   *Check if yes or open to discussion, leave empty if con. Elaborate in Notes.* | |  | |
|  | 1. **Are there personal relationships at senior management levels between potential parties in this dispute?**   *Check if yes and write those relationships in Notes.* | |  | |
|  | * 1. **Is it a relatively insular commercial context, in which management all know one another and reputations might be important?**   *Check if yes.* | |  | |
|  | 1. **Would it be difficult to integrate ADR with broader company risk management strategies?**   *Check if yes.* | |  | |
|  | 1. *Write your own checklist items here* | |  | |
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