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ADJUDICATION
SERVICE

ADJUDICATION

Part 2 of the Housing Grants, Construction & Regeneration Act 1996 came in force on 1 May 1998 (“Construction Act”) and introduced, for the first time, a **statutory right** for party to a Construction Contract evidenced in writing to refer a dispute under that contract to Adjudication at any time (s.107). This Construction Act laid down the requirements that a contract must contain (s.108). If the contract failed to comply with s.108 a mechanism for adjudication and a set of rules for that process as set out in the Scheme for Construction Contracts Regulations 1998 (“the Scheme”) would be implied into the contract.

On 1 October 2011, Part 8 the Local Democracy, Economic Development and Construction Act 2009 came into effect and, amongst other things, amended the Adjudication provisions of the Construction Act. These amendments apply to construction contracts entered into after 1 October 2011. As a consequence of these amendments, the Scheme was also amended by the Scheme for Construction Contracts Regulations 1998 (Amendment) Regulations 2011 (“Amended Scheme”).

One of the fundamental amendments contained within the LDEDC Act in respect of Adjudication was the repeal of s.107 of the Construction Act (i.e. the rule that only a dispute under contract that is evidenced in writing can be referred to Adjudication). Consequently, a dispute under an oral contract as well a contract evidenced in writing (or part oral and part in writing) can be referred to Adjudication.

Since Adjudication is a **dispute resolution process that has been in place for over 20 years** it has proven to be a quick way to obtain an enforceable decision on an immediate problem and is considered to be a pre-requisite of proceeding to either litigation or arbitration. The Adjudicator’s decision is binding on the parties until one of the parties decides to have the dispute finally determined by either litigation or arbitration (depending what is agreed in contract) – however, the instances of final resolution are rare.

What are the benefits of Adjudication?

- Speed** A party to a construction contract has the right to refer a dispute at any time. This, therefore, allows a dispute to be referred (without the need to satisfy any pre-condition) during the course of a Project. The Construction Act provides that once a dispute is referred, the Adjudicator must reach his decision within 28 days of the Referral unless the party that referred the dispute agrees to extend the period for the decision by a further 14 days (and any further time thereafter, by agreement of both parties).
- Cost** Due to the prescribed time frame for the decision, Adjudication is also substantially more economic than Arbitration and/or Litigation and is often a definitive end to the dispute. It is common that each party is responsible for its own costs, this means a party is not liable for the other party’s costs (which is not the case with litigation and arbitration). Furthermore, the Adjudicator usually has discretion as to how his costs are proportioned between the parties. Therefore, if you are successful in bringing your claim and/or defending a claim, the Adjudicator may decide that his costs are often borne by the opposing Party. With this in mind, the consideration of a parties’ budget for bringing and/or defending a claim becomes less daunting.
- Impartiality** Adjudicator’s have a duty to reach an impartial enforceable decision based on the submissions from the Parties, the law and must observe the rule of natural justice.

What types of dispute can be referred to Adjudication?

Contractor's, Sub-Contractors and Employers alike may face from time to time, issues that manifest into disputes between the parties to a construction contract. These issues come in many forms and often under the guise of the following:

Valuation and Payment

Valuation and/or payment disputes are the most common type dispute. Valuation disputes typically arise due to a difference on the value of the agreed works, additional or omitted works and entitlement to additional costs or loss. Whereas payment disputes are often due to the payee contending that the payor has undervalued the works, failed to certify an interim payment, a failure to serve a payment and/or a payless notice or complex final account claims that require detailed assessments and valuation of the works undertaken.

Delay and Disruption

Claims for a simple extension of time claim to complex delay and disruption claims are commonly referred to adjudication. Often coupled with delay and disruption, are claims for additional costs, loss and liquidated or unliquidated damages. Arguments concerning notification of delays, time bars and programming often form part of such claims.

Declarations

Parties can refer a point in dispute whether it has a financial conclusion or not. Providing there is a construction contract and a dispute has crystallised, either party can refer the disputed matter for determination by an Adjudicator to allow the parties to move on with the project following a conclusive decision by the Adjudicator. For example, do the works comply with the specification or has the payee served an effective notice of the amount to be paid or pay less?

Quality issues & Defect

Another common issue that is often referred to Adjudication is quality issues and defects. It may be that the issue is one that concerns quality of workmanship, defects liability period, certificate of completion and/or completion of defects or more generally whether there is in fact a defect with the works or not.

DGA Adjudication Service

Contractual advice and Representation

With our wealth of experience and expertise, DGA can provide a wide range of services should you find yourself in potential dispute. DGA's professional consultants are well versed in construction claims and can provide pragmatic contractual advice as to the strengths and weaknesses of your case, whether you are a party intent on referring the dispute (the Referring Party) or a party defending a referred dispute to Adjudication (the Respondent).

Armed with this advice, should a matter need proceed to Adjudication, with DGA you are represented by our dual qualified professionals who have a practical and commercial mind set coupled with the legal skills and experience, necessary to progress your claim in the most effective way to suit your circumstances.

We have a vast portfolio in construction claims and representation in Adjudication and regularly represent national, international and regional Contractors, Sub-Contractors and Employers alike. Whether your dispute concerns a valuation, payment, delay or defects, DGA can provide the professional service that you require to pursue your entitlement and/or defend claims from an opposing party.

Our experience further stretches over an array of sectors in the industry - retail, commercial, industrial, civil engineering (roads, ports and bridges), energy and rail are just a few.

Expert Witness service (Quantum and/or programme, Delay)

The senior members of the DGA Group provide expert advice in connection with the development and defence of commercial claims and delay, and the avoidance and resolution of disputes.

If you already have your representation in place, our team members are regularly instructed by in-house or external legal counsel to stand as expert witness and provide an independent opinion to the tribunal on the issues such as: the value of the works, variations, loss and expense and/or damages; and the programme and delay/ extension of time.

Contact your local office for further details and to discuss your enquiry further:

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