



## **THE LAW SOCIETY OF IRELAND**

### **Expert Determination Rules**

#### **1. GENERAL**

These Rules ("the Rules" which expression shall include any modifications which may from time to time be made thereto) offer a procedure to parties in dispute wishing to have their dispute resolved by the determination of an expert rather than by arbitration or other alternative dispute resolution process.

#### **2. APPLICATION OF THE RULES**

- 2.1. Where parties to an agreement have agreed that one or more disputes between them shall be referred to an expert for determination under the Rules then:
  - 2.1.1. such disputes shall be resolved in accordance with the Rules subject to such modifications as the parties may agree;
  - 2.1.2. unless otherwise specified by the parties, the Rules in effect on the date when written notice is first served by one party on the other requiring the appointment of an expert to determine the dispute which has arisen between them, shall apply.
- 2.2. If there is any conflict between what the parties have agreed and the Rules the former will prevail provided such agreement is evidenced in writing.
- 2.3. The parties may make such changes to the Rules as they see fit and such changes shall apply provided that the Expert is notified of such changes prior to his/her appointment. Any changes which the parties wish to make to these Rules subsequent to the appointment of the Expert (or which have not been notified to the Expert prior to his/her appointment) will be subject to the Expert's consent. The Expert's consent to any such changes shall not be unreasonably withheld or delayed.
- 2.4. The parties may agree to use the Rules before or after the dispute has arisen.

#### **3 COMMENCEMENT OF EXPERT DETERMINATION**

- 3.1 The party wishing to refer a dispute ("the Dispute") to expert determination ("the Claimant") shall give written notice ("the Expert Determination Notice") to the other party ("the Respondent") of its wish to do so.
- 3.2 The expert determination proceedings ("the Proceedings") shall be deemed to commence on the date when the Expert Determination Notice is received by the Respondent.

3.3 The Expert Determination Notice shall include the following:

- 3.3.1 a request that the dispute be referred to expert determination;
- 3.3.2 the names and contact details of the relevant parties;
- 3.3.3 identification of the agreement between the parties to refer disputes to expert determination pursuant to which the Expert Determination Notice has been served ("the Agreement");
- 3.3.4 identification of the contract or other agreement out of or in relation to which the Claimant's claim arises;
- 3.3.5 a brief description of the Claimant's claim and an indication of the amount (if any) claimed by the Claimant;
- 3.3.6 the relief or remedy sought by the Claimant.

3.4 Within 30 days of receipt of the Expert Determination Notice the Respondent may serve written notice on the Claimant ("the Counter Notice") of any further issues which it wishes to be included in the reference to expert determination.

3.5 The Counter Notice shall include the following:

- 3.5.1 identification of the further issues which the Respondent wishes to be included in the reference to expert determination;
- 3.5.2 the names and contact details of any relevant parties not identified by the Claimant in the Expert Determination Notice;
- 3.5.3 identification of the agreement between the parties to refer disputes to expert determination pursuant to which the Counter Notice is served;
- 3.5.4 identification of the contract or other agreement out of or in relation to which the further issues detailed in the Counter Notice arise;
- 3.5.5 a brief description of the Respondent's claim and an indication of the amount (if any) claimed by the Respondent;
- 3.5.6 the relief or remedy sought by the Respondent.

#### **4 APPOINTMENT OF EXPERT**

4.1 The Claimant shall when serving its Expert Determination Notice, or within fourteen days thereafter, nominate in writing to the Respondent one or more persons to act as the Expert ("the Claimant's Nomination"). Within fourteen days of receipt of the Claimant's Nomination, the Respondent shall by notice in writing to the Claimant accept the Claimant's Nomination, reject the Claimant's Nomination or nominate another person or persons to act as the Expert.

4.2 In the event of the parties failing to agree on the Expert within 30 days of receipt by the Respondent of the Claimant's Nomination, the Expert shall be appointed on the application of either party by the President ("the President") for the time being of the Law Society of Ireland ("the Society") or should the President be absent, unwilling or

unable to do so, by such officer of the Society as is authorised by the President to make the appointment. The party seeking the appointment shall furnish to the other party or parties a copy of the application to the President and shall furnish to the President:-

- 4.2.1 a copy of the Expert Determination Notice and the Counter Notice (if any)
  - 4.2.2 a copy of the agreement between the parties evidencing the authority of the President to make the appointment including details of any conditions to be satisfied before the appointment of the Expert is made,
  - 4.2.3 the expertise, qualifications or experience which the Expert is required to have or are desirable;
  - 4.2.4 the names and addresses of the relevant parties,
  - 4.2.5 an estimate of the value of the matters in dispute,
  - 4.2.6 evidence that the parties have failed to agree on the appointment of the Expert,
  - 4.2.7 evidence that the party making the application has furnished a copy of the application to the other party or parties, and
  - 4.2.8 the fee for the time being chargeable by the Society for the President to make such appointment.
- 4.3 the President shall as soon as is reasonably possible following receipt of the application make the appointment and shall notify the parties and the Expert in writing thereof.
- 4.4 Immediately following his/her appointment, the Expert shall immediately confirm the appointment in writing to the parties.
- 4.5 The Expert shall be deemed to be an expert in the subject matter of the Dispute.
- 4.6 The Expert shall determine the Dispute in accordance with the Rules.
- 4.7 When a person is approached in connection with his possible appointment as an Expert, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- 4.8 If any circumstance arises, whether in advance or in the course of the Proceedings, which might reasonably call into question the Expert's independence or impartiality, the Expert shall immediately notify the parties in writing. If as a consequence both parties do not wish the Expert to proceed, the Expert shall immediately resign. If only one of the parties does not wish the Expert to proceed, the Expert, having consulted with the parties, shall determine whether to proceed or resign. Any such determination by the Expert shall be final.
- 4.9 These provisions shall also apply to the appointment (whether by agreement or otherwise) of any replacement Expert where the original Expert (or any replacement) has ceased to act, is incapable of acting or dies.

## **5 PROCEDURE**

- 5.1 The Expert shall, after consultation with the parties and in accordance with the Rules, decide how the process is to be conducted. The Expert may convene such meetings, whether in person, by telephone conference call or otherwise, as the Expert deems fit in order to clarify the issues in dispute and to decide how best to progress the Proceedings.
- 5.2 If there is disagreement between the parties concerning the scope of the Dispute, the Expert may determine its scope after consultation with the parties. Any such determination by the Expert shall be final and binding.
- 5.3 The Expert may, after consultation with the parties, decide the method of communication to be used. In the absence of any direction by the Expert, all communications to and from the Expert shall be in writing and be copied simultaneously by the same means to the other party and noted on the correspondence accordingly.
- 5.4 The parties shall cooperate with the Expert and comply promptly with any requests/directions made by the Expert.
- 5.5 The Expert may:
- 5.5.1 rely on the Expert's own expertise in the subject matter of the Dispute;
  - 5.5.2 initiate such lines of enquiry as the Expert feels will assist in the making of his determination;
  - 5.5.3 carry out such inspections or investigations as the Expert deems appropriate;
  - 5.5.4 meet the parties separately or together to discuss any aspect of the Dispute.
- 5.6 The Expert is not obliged to:
- 5.6.1 hold meetings or hearings with the parties;
  - 5.6.2 inform the parties of the results of any enquiries, inspections or investigations conducted by the Expert in advance of making his determination,
  - 5.6.3 give the parties an opportunity to comment on matters which the Expert may consider significant notwithstanding that these matters have not been raised by the parties.
- 5.7 The Expert and the parties shall take all reasonable steps to ensure that the Proceedings are conducted in an efficient, timely and cost-effective manner.

## **6 EXPERT'S DETERMINATION**

- 6.1 The Expert shall determine the Dispute without unreasonable delay.
- 6.2 The Expert's determination of the Dispute shall be in writing, signed and dated by the Expert and, unless otherwise agreed by the parties, shall contain the reasons for the determination in such form as is deemed appropriate by the Expert.

6.3 The Expert may correct any clerical mistake, error arising from an accidental slip or omission, miscalculation of figures or mistake in the description of any person, thing or matter or defect of form in the determination provided that any such correction is made within 10 Days of receipt of the determination by the parties.

6.4 Subject to any correction of the Expert's determination under rule 6.3 hereof, the expert determination process shall conclude once the Expert has issued the determination to the parties.

6.5 Unless otherwise agreed in writing by the parties, any determination by the Expert shall be final and binding on them.

## **7 COSTS**

7.1 The parties shall pay their own costs arising from the expert determination and shall share the costs of the Expert, together with any associated costs, equally on a joint and several basis.

7.2 The Expert's fees shall be reasonable and proportionate and the basis for such fees shall be set out and agreed in the Expert's terms at the outset. The Expert may withhold any determination from the parties until all outstanding fees due to the Expert have been paid.

## **8 CONFIDENTIALITY**

8.1 The Expert and the parties, including their advisers and representatives, shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of that process the Expert's determination, or any information received or obtained, except to the extent that:

8.1.1 the parties agree otherwise in writing;

8.1.2 the information is in the public domain already;

8.1.3 disclosure is required for the purposes of any legal proceedings relating to enforcement of the Expert's determination;

8.1.4 disclosure is otherwise required by law.

## **9 LIABILITY**

9.1 The Expert, and any employee, agent or adviser of the Expert, shall not be liable to the parties or any person claiming through them in any proceedings for anything done or omitted to be done in the discharge or purported discharge of the Expert's functions arising out of or in connection with the expert determination process or the way in which it was conducted and the parties shall not bring any such claims against the Expert or any employee, agent or adviser of the Expert.

9.2 The Society, the President, or any officer of the Society authorised by the President to appoint the Expert under the Rules or their servants or agents, shall not be liable for anything done or omitted to be done in the discharge or purported discharge of any function exercised by them under the Rules.

