

# Domestic Arbitration Process

## DOMESTIC ARBITRATION ADMINISTERED BY ADC

Arbitration is a process in which the participants to a dispute present arguments and evidence to an independent and impartial third party (the arbitrator) or arbitral tribunal who hands down an award which is binding on the parties. ADC arbitrations are conducted in accordance with the ADC Rules for Domestic Arbitration and the provisions of the Commercial Arbitration Act in each State.

# 1

## NOTIFICATION

**Notice of Dispute:** The party alleging a dispute must serve a notice to the other party, setting out: (i) the nature of the dispute; (ii) how the dispute arose; and (iii) the remedy sought (Notice of Dispute). There is no specific form for the Notice, but it must be apparent on the face of the document that it is a Notification of a Dispute.

**Notice of Response:** Within seven days of receipt of the Notice of Dispute, the other party must provide a written response stating its position in relation to the dispute (Notice of Response). There is no specific form for the Notice, but it must be apparent on the face of the document that it is a Notification of Response to a dispute.

**Reasonable steps to resolve:** If parties have not resolved the dispute within seven days (or within such time as agreed by the parties), then both, or either of the parties may notify ADC that the dispute has not been resolved and is to be referred to arbitration. ADC should be provided with copies of the Notice of Dispute, Notice of Response and the agreement under which the dispute has arisen. ADC's case registration fees must be paid for the matter to proceed. Generally parties will each pay half of the amount, although one party can pay the whole amount for the matter to move forward.

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## APPOINTMENT

**Provision of Panel:** Based on the material provided by the parties, ADC will provide the parties with a panel of two or more qualified arbitrators, including copies of their CVs and information relating to their fees.

**List of preferences:** Within seven days of receiving these details, the parties separately provide ADC with a list setting out their order of preference with respect to the proposed arbitrators. Any concerns about unsuitable candidates may also be expressed to ADC at this point. The appointment of an arbitrator is at the ADC's absolute discretion.

**Selection:** If a preferred arbitrator can be identified from the lists provided by the parties then ADC will most likely appoint that person. If parties fail to identify a preferred arbitrator, ADC will follow any other agreed method of appointment (if any). If no alternative method is agreed, ADC will, in its absolute discretion, appoint an arbitrator.

**Appointment:** ADC will confirm the appointment to the parties and the arbitrator. ADC will also request an estimate of fees and disbursements from the arbitrator to provide to the parties. The parties will be requested to make payment of a security deposit within 14 days of the provision of the estimate.

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# 3

## PROCEEDINGS

**Preparation:** The arbitrator will notify the parties of the date (usually within 14 days, unless otherwise agreed) and place for holding a preliminary conference to set a timetable for the exchange of documents and statements of issues, and other procedural matters. The arbitration shall commence as soon as practicable after ADC has received the security deposit.

**Procedural directions:** The arbitrator must proceed to hearing unless the parties agree to proceed by documents only. During the hearing, the parties are bound by any procedural direction which may be given by the arbitrator (including with respect to terms of reference, if the parties are otherwise unable to agree). The arbitrator may determine the submission or limitation of: pleadings, discovery, opening and closing addresses, lodgement of sworn statements or affidavit evidence, reply to documents tendered, cross-examination of deponents, expert witnesses and reports, calling, examining and cross-examining witnesses.

**Adjournment:** The arbitration may be adjourned should the arbitrator or the parties believe direct negotiation or mediation would assist the resolution of the dispute. If the arbitration is adjourned, mediation or negotiation must occur within 21 days of the adjournment and conclude within 28 days (unless otherwise agreed by the parties).

# 4

## AWARD

**Deliberation:** In determining the matter, the arbitrator will take into consideration all documents, information, other written and oral material (including site visits or inspections if necessary) and views the parties have submitted before the arbitrator.

**Award and reasons:** The arbitrator will hand down a final award which is binding on the parties. The arbitrator is required to give reasons for the award given (unless otherwise agreed by the parties).

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## DISPUTE RESOLVED

### APPLICABLE FEES

#### REGISTRATION AND ADMINISTRATION FEES\*

For each arbitration, ADC charges a non-refundable registration fee as follows:

- \$1,500.00 (Incl.GST) which covers registration and the first five hours of administration by ADC.
- In the case where the claims of more than one aggrieved party are consolidated, ADC may in its absolute discretion, charge a fee to cover registration and the first 5 hours of administration by ADC which, in general, will amount to \$750.00 per party (Incl. GST).

ADC may in its absolute discretion charge a further administration fee at the rate of \$250.00 (Incl.GST) per hour, after the first 5 hours of administration covered by the registration fee.

#### REFERRAL FEE

15% of the arbitrator's fee is payable to ADC.

\*Current as at 1 March 2019.

### NOTE

*This fact sheet provides general information about ADC's arbitration case management process. It does not constitute legal advice and should not be relied upon as such. The process may vary from case to case and is dependent on the parties' agreement. It is recommended that you seek independent legal advice to consider the application of the process to your circumstances.*