

Expert Determination Process

EXPERT DETERMINATIONS ADMINISTERED BY ADC

Expert determination is a contractual dispute resolution process whereby parties submit a dispute to a third party (usually a person with specific technical, or other expertise). The determination of the expert is generally binding on the parties unless they agree otherwise. ADC expert determinations are conducted in accordance with the ADC Rules for Expert Determination.

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NOTIFICATION

Notification of Dispute: The party alleging a dispute must provide written notice to the other party, setting out: (i) the nature of the dispute; (ii) the expertise considered to be required to resolve the dispute; and (iii) a description of the project or circumstances of the dispute (Notice of Dispute). There is no specified form for the Notice of Dispute, but it must be apparent on the face of the document that it is a Notification of a Dispute.

Notification of Response: Within 21 days of receipt of the Notice of Dispute, the other party or parties must provide a written response stating its position, including: (i) the expertise it considers is required to resolve the dispute; and (ii) any comment on the circumstances of the dispute (Notice of Response).

Reasonable steps to resolve: If the dispute is not resolved within 14 days, or within a period agreed upon by the parties, then parties shall notify ADC that the dispute has not been resolved and is to be referred to expert determination. ADC should be provided with a copy 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 OF EXPERT

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

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

Selection: If a preferred expert can be identified from the list provided by the parties then ADC will most likely appoint that person. If the parties fail to identify a preferred expert, ADC will follow another agreed method of appointment (if any). If no alternative method is agreed, within a reasonable time ADC will, in its absolute discretion, appoint the expert.

Appointment: ADC will confirm the appointment to the expert and the parties. ADC will also request an estimate of fees and disbursements from the expert 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. The parties and the expert will also be required to execute an Expert Determination Agreement.

PROCESS CONTINUES OVER PAGE

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PROCEEDINGS

Submissions: The process for the expert determination will be agreed by the parties and the expert. In many cases, parties will make separate or joint submissions to the expert, and there may be a right of reply.

Meeting: If the expert considers it necessary or desirable, the expert may direct the parties to attend a meeting at a time and venue that is reasonably convenient to both parties. The parties are entitled to legal representation at any meetings and at the expert determination.

Directions: The expert may give direction as to the procedure that will be followed in the expert determination and a timetable for the provision of documents and submissions.

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OUTCOME

Determination: The expert may make a binding determination on the matters in dispute on the basis of the information received from the parties and the expert's own expertise, and in accordance with the law. The parties may also require the expert to provide written reasons for the determination.

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DISPUTE RESOLVED

APPLICABLE FEES

REGISTRATION AND ADMINISTRATION FEES*

For each expert determination, 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 (inclusive of GST) per hour, after the first 5 hours of administration covered by the registration fee.

REFERRAL FEE

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

*Current as at 1 March 2019.

NOTE

This fact sheet provides general information about ADC's expert determination 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.