

**COMMERCIAL MEDIATION AND CONCILIATION
SERVICES**

MODEL RULES FOR ADJUDICATION

The Model Adjudication Procedure (MAP) forms part of the guidance, which Commercial Mediation and Conciliation Services (CMCS) is providing to assist with the implementation of adjudication. It is drafted to comply with the Law of Ireland and can be incorporated by reference into a contract, or used by agreement of the parties.

It is for use where the law of the contract is that of Ireland.

This procedure is accompanied by a model adjudicator agreement.

Disclaimer – This document is drafted to form an agreement between parties. CMCS has no liability for any aspect of the parties' actions in the use of this agreement.

CMCS MODEL ADJUDICATION PROCEDURE

Definitions

1. 'Adjudicator' means the person as such in the Contract or appointed in accordance with this Procedure.
2. 'Contract' means the contract between the Parties which contains the provision for adjudication.
3. 'Notice' means the notice given under paragraph 12.
4. 'Party' means a party to the Contract, and any additional parties joined under paragraph 27.
'Referring Party' means the Party who gives notice under paragraph 12.

General Principles

Object

5. The object of adjudication is to reach a fair, rapid and inexpensive decision upon a dispute arising under the Contract and this procedure shall be interpreted accordingly.

Impartially

6. The Adjudicator shall act impartially.

The Adjudicator's role

7. The Adjudicator may take the initiative in ascertaining the facts and the law. He may use his own knowledge and experience. The adjudication shall be neither an arbitration nor an expert determination.

Decision binding in interim

8. The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.

Implementation of the decision

9. The Parties shall implement the Adjudicator's decision without delay, whether or not the dispute is to be referred to legal proceedings or arbitration.

Application

Application

10. If these Rules are incorporated into the Contract by reference, the reference shall be deemed to be to the edition current at the date of the Notice.

Conflict

11. If a conflict arises between this procedure and the Contract, unless the Contract provides otherwise, these Rules shall prevail.

Notice of Adjudication

Notice of adjudication

12. Either Party may give notice at any time of its intention to refer a dispute arising under the Contract to adjudication by giving a written Notice to the other Party. The Notice shall include a brief statement of the issue or issues which it is desired to refer and the redress sought.

Appointment of Adjudicator

Time for appointment and referral

13. The object of the procedure in paragraphs 13-17 is to secure the appointment of the adjudicator and referral of the dispute to him within 7 days of the Notice.

14. If an adjudicator is named in the Contract, he shall within 2 days of receiving the Notice confirm his availability to act. If no adjudicator is named, or if the named adjudicator does not so confirm, the referring Party shall request the body stated in the Contract if any, or if none the Commercial Mediation and Conciliation Services, to nominate an Adjudicator within 5 days of receipt of the request. The request shall be in writing, accompanied by a copy of the Notice and the appropriate fee. Alternatively the Parties may, within 2 days of the Notice, appoint the Adjudicator by agreement.
15. If, for any reason, the Adjudicator is unable to act, or fails to reach his decision within the time required by this procedure, either Party may request the body stated in the Contract if any, or if none the Commercial Mediation and Conciliation Services, to nominate a replacement adjudicator.
16. Unless the Contract provides otherwise, the Adjudicator shall be appointed on the terms and conditions set out in the attached Agreement. On appointment the parties are jointly and severally liable for the Adjudicator's fees.
17. If a Party objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the Adjudicator's appointment or any decision he may reach.

Referring the Dispute

18. The Referring Party shall refer the dispute to the Adjudicator by sending to the Adjudicator within 7 days of the Notice (or as soon thereafter as the Adjudicator is appointed) with a copy to the other Party, the particulars of the dispute including:
 - .1 A statement of its case;
 - .2 A copy of the Notice;
 - .3 Details of the Contract;
 - .4 Details of the circumstances giving rise to the dispute;
 - .5 The reasons why it is entitled to the redress sought; and
 - .6 The evidence upon which it relies.

19. The Date of Referral shall be the date on which the Adjudicator receives this statement of case.
20. The Adjudicator shall reach his decision within 28 days of the Date of Referral, or such longer period as is agreed by the Parties after the dispute has been referred. The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the Referring Party.
21. The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable, subject to any limitation there may be in the Contract. He shall not be required to observe any rule of evidence, procedure or otherwise, of any court or tribunal. Without prejudice to the generality of these powers, he may:
 - .1 Request a written defence, further argument or counter argument;
 - .2 Request the production of documents or the attendance of people whom he considers could assist;
 - .3 Visit the site;
 - .4 Meet and question the Parties and their representatives;
 - .5 Meet the Parties separately;
 - .6 Limit the length or time for submission of any statement, defence or argument;
 - .7 Proceed with the adjudication and reach a decision even if a Party fails to comply with a request or direction of the Adjudicator;
 - .8 Issue such further directions as he considers to be appropriate;
 - .9 Consider and/or dismiss arguments;
 - .10 Give the weight he considers necessary to any evidence; and
 - .11 Take notice of any matter which he considers relevant without bringing it to the attention of either party.

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22. The Parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
 23. The Adjudicator may obtain legal or technical advice, provided that he has notified the Parties of his intention first. He shall provide the Parties with copies of any written advice received.
 24. The Adjudicator shall decide the matters set out in the Notice, together with any other matters which the Parties and the Adjudicator agree shall be within the scope of the adjudication.
 25. The Adjudicator may open up, review and revise any certificate, decision, direction, instruction, notice, opinion, requirement or valuation made in relation to the Contract.
 26. The Adjudicator shall determine the rights and obligations of the Parties in accordance with the law of the Contract.
 27. Any Party may at any time ask that additional parties shall be joined in the adjudication. Joinder of additional parties shall be subject to the agreement of the Adjudicator and the existing and additional parties. An additional party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the Adjudicator and the Parties.
 28. The Adjudicator may resign at any time on giving notice in writing to the Parties. The parties shall remain jointly and severally liable for the Adjudicator's fees.

The Decision

29. The Adjudicator shall reach his decision within the time limits in paragraph 20. The Adjudicator may withhold delivery of his decision until his fees and expenses have been paid. He shall provide short reasons if requested to do so by either party.
30. If the Adjudicator fails to reach his decision within the time permitted by this procedure, his decision shall nonetheless be effective if reached before the referral of the dispute to any replacement adjudicator under paragraph 15 but not otherwise. If he fails to reach such an effective decision, he shall not be entitled to any fees or expenses (save for the cost of any legal or technical advice subject to the Parties having received such advice).
31. The Adjudicator may in any decision direct the payment of such simple or compound interest from such dates, at such rates and with such rests, as he considers appropriate.

Cost and fees

32. The Parties shall bear their own costs and expenses incurred in the adjudication.
33. The Parties shall be jointly and severally liable for the Adjudicator's fees and expenses, including those of any legal or technical adviser appointed under paragraph 23, but the Adjudicator may direct a Party to pay all or part of the fees and expenses. If he makes no such direction, the Parties shall pay them in equal shares. The Party requesting the adjudication shall be liable for the Adjudicator's fees and expenses if the adjudication does not proceed.

Enforcement

Enforcement

34. The Parties shall be entitled to the redress set out in the decision and to seek summary enforcement, whether or not the dispute is to be finally determined by legal proceedings or arbitration. No issue decided by the Adjudicator may subsequently be referred for decision by another adjudicator unless so agreed by the Parties.
35. In the event that the dispute is referred to legal proceedings or arbitration, the Adjudicator's decision shall not inhibit the right of the court or arbitrator to determine the Parties' rights or obligations as if no adjudication has taken place.

Miscellaneous Provisions

36. Unless the Parties agree, the Adjudicator shall not be appointed arbitrator in any subsequent arbitration between the Parties under the Contract. No Party may call the Adjudicator as a witness in any legal proceedings or arbitration concerning the subject matter of the adjudication.
37. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator (whether in negligence or otherwise) unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected from liability.
38. The Adjudicator is appointed to determine the dispute or disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall owe no duty of care.
39. This procedure shall be interpreted in accordance with the law of Ireland.