

## The role of an arbitrator

Arbitration is a dispute resolution procedure whereby two parties in dispute agree (an arbitration agreement) to be bound by the decision of an independent third party (the arbitrator). The role of an arbitrator is similar to that of a judge save that, on the principle of 'party autonomy' (whereby the parties can agree procedural and evidential matters), the procedures can be less formal. An arbitrator is usually an expert in his/her own right.

An arbitrator should be able to:

- Act fairly and impartially using his/her general knowledge of the subject matter;
- Reach a fair decision based on the evidence and arguments submitted by the parties; and
- When appropriate take the initiative in ascertaining the facts and law.

## The advantages of arbitration

Arbitration is private (unless the award made is challenged and appealed to a court of law) and often informal. Many property or construction disputes can be settled quickly and fairly by arbitration. A chartered surveyor arbitrator will be able to understand the disputed issues faced by the parties in a land, property or construction dispute. The arbitrator's decision is final and binding, although there are limited rights of appeal to the courts on procedural irregularities and a point of law.

Agreements to refer disputes to arbitration are often made in a lease or contract. If not, a separate agreement can be made by the parties after a dispute has arisen.

## Rules governing arbitrators

When the juridical seat (the application of the arbitration law) of the arbitration is in England and Wales or Northern Ireland, the procedure for arbitration is regulated by statute, namely the Arbitration Act 1996. The Act centres on principles of:

- the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
- freedom of the parties to agree how their disputes are resolved (party autonomy);
- non-intervention of the courts; and
- implied confidentiality.

The decision of an arbitrator, which is called the 'award', is enforceable by a court of law. Unless otherwise agreed, the arbitrator must give reasons with his/her award that explain the decision (this is sometimes called a 'speaking award'). Unless otherwise agreed, he/she has a power to decide the allocation of costs (who pays) and the amount of recoverable costs; an agreement with the effect that a party is to pay the whole or part of the costs of the arbitration is only valid if made after the dispute in question has arisen (see s 60 of the Arbitration Act 1996). Costs include the arbitrator's fees, a party's costs and the fees of a nominating institution (e.g. RICS).

## Working knowledge

Arbitrators should note that PS 1.2 RICS Valuation Standards (the 'Red Book') excludes arbitration awards. Arbitrators in the UK should have a working knowledge of the following items (as relevant to the nature of the particular dispute):

- Surveyors acting as arbitrators and as independent experts in commercial property rent reviews (RICS guidance note) \*;
- Surveyors acting as arbitrators and as independent experts in construction related disputes (RICS guidance note) \*;
- Surveyors acting as advocates (RICS practice statement and guidance note)
- Surveyors acting as expert witnesses (RICS practice statement and guidance note);
- Handbook of Rent Review (by Kirk Reynolds QC and Guy Fetherstonhaugh QC, Sweet & Maxwell); and
- The Arbitration Act 1996

\* Scottish editions also available.

## Further reference

Arbitration Act 1996 –  
[www.legislation.hmso.gov.uk/acts/acts1996/1996023.htm](http://www.legislation.hmso.gov.uk/acts/acts1996/1996023.htm)  
(England & Wales & Northern Ireland)

RICS practice standards –  
[www.rics.org/guidance](http://www.rics.org/guidance) (downloads accessible to RICS members only)

Rent Reviews under the Agricultural Holdings Act 1986 (RICS Rural Faculty briefing paper/CAAV numbered publication 190)

A draft Scottish Arbitration Bill is under consideration in the Scottish Parliament and is expected to become law in late 2009/early 2010.

In Ireland, the Arbitration Act 1954 is the primary statute although a new draft Bill to dopt UNCITRAL is under consideration.

### RICS Dispute Resolution Service (DRS)

Surveyor Court  
Westwood Way  
Coventry CV4 8JE, UK  
t + 44 (0) 207 334 3806  
f + 44 (0) 020 7334 3802  
e [drs@rics.org](mailto:drs@rics.org)  
w [rics.org/drs](http://rics.org/drs)

The DRS offer a complete range of methods for resolving disputes including arbitration, expert determination, mediation, adjudication, enabling people to resolve property disputes quickly and effectively, without going to court. They also make appointments of Single Joint Experts. Application forms for a range of services are available via the RICS website.

### RICS Scotland Dispute Resolution Service (DRS Scotland)

9 Manor Place  
Edinburgh, Scotland  
EH3 7DN  
t + 44 (0) 131 240 0832  
f + 44 (0)131 240 0830  
e [drsscotland@rics.org](mailto:drsscotland@rics.org)  
w [www.rics.org/site/scripts/documents\\_info.aspx?categoryID=253&documentID=439](http://www.rics.org/site/scripts/documents_info.aspx?categoryID=253&documentID=439)

The DRS Scotland offers a range of methods for resolving disputes enabling people to resolve property disputes quickly and effectively in Scotland, without going to court. Application forms for a range of services are available via the RICS website.

### Republic of Ireland Appointments Service

Arbitrations Officer  
Society of Chartered Surveyors  
5 Wilton Place, Dublin 2, Ireland  
t + 353 (0)1 676 5500  
e [info@scs.ie](mailto:info@scs.ie)  
w [www.scs.ie](http://www.scs.ie)

### RICS Hong Kong

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Room 1804  
18/F Hopewell Centre  
Wanchai  
Hong Kong, P.R.C.  
t + 852 2537 7117  
f + 852 2537 2756  
e [ricsasia@rics.org](mailto:ricsasia@rics.org)  
w [rics.org/hongkong](http://rics.org/hongkong)

Arbitration has a long history in Hong Kong and has been the preferred method of resolving disputes in construction and engineering projects in both the private and public sector for many years. More recently mediation and other alternative dispute resolution procedures have increasingly also been adopted as alternatives. Arbitration remains the prescribed dispute resolution procedure in both government and private standard forms of contract, to be utilised when other methods are unsuccessful in resolving disputes between parties.

The Hong Kong International Arbitration Centre maintains a list of qualified arbitrators including those who are members of the RICS. Hong Kong International Arbitration Centre:  
w [www.hkiac.org/HKIAC/HKIAC\\_English/main.html](http://www.hkiac.org/HKIAC/HKIAC_English/main.html)

### RICS Oceania Dispute Resolution Service (DRS Oceania)

PO Box 7815  
Waterfront Place  
Brisbane QLD 4001  
Australia  
t + 61 07 3360 0256  
f + 61 07 3360 0222  
e [contact@ricsdrs.com.au](mailto:contact@ricsdrs.com.au)  
w [www.ricsdrs.com.au/index.php](http://www.ricsdrs.com.au/index.php)

The DRS Oceania offers a range of dispute resolution training and appointment services. Application forms for a range of services are available via the website. For more information, please contact the office.

### RICS Books

t + 44 (0) 20 7222 7000  
f + 44 (0) 20 7334 3851  
e [mailorder@rics.org.uk](mailto:mailorder@rics.org.uk)  
w [ricsbooks.com](http://ricsbooks.com)

Stocks a wide range of titles in the dispute resolution arena.

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