

ARBITRATION

Arbitration is a Dispute Resolution procedure where two parties in dispute agree to be bound by the decision of an Arbitrator appointed to determine the dispute.

Agreements to refer disputes to arbitration are often made in a lease or contract. These typically include the appointment of an Arbitrator to determine a rent review between a landlord and tenant, service charge disputes and other property or construction disputes.

The role of an Arbitrator is similar to that of a Judge at Court. However, the principle of “party autonomy” applies whereby the parties can agree procedural and evidential matters. The Arbitrator is usually an expert in his/her own right, however, their decision (called “The Award”) is based on the evidence provided to them by the parties or their representatives.

Arbitration is private and often informal. The advantages for the parties to the dispute are that arbitration is a quicker and cheaper alternative to Court and the Arbitrator will be able to understand the disputed issues involved.

The Arbitrator’s decision is final and binding. There are limited rights of appeal to the Courts on procedural irregularities and a point of law.

The procedure for arbitration is regulated by the Arbitration Act 1996 and centres on the 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 Court;
- Implied confidentiality.

The decision of an Arbitrator is enforceable by a court of law.

Unless otherwise agreed, the Arbitrator must give reasons with his/her Award that explain the decision. The Arbitrator also has the power to decide the allocation of costs (who pays) and the amount of costs depending on the outcome. Costs include the Arbitrator’s fees, a party’s costs and the appointing institution.

The Arbitrator’s role is to act fairly and impartially using his/her general knowledge of the subject matter; reach a fair decision based on the evidence and argument submitted by the parties; and where appropriate taking the initiative to ascertain the facts and the law.

Rent Reviews

A rent review clause in a commercial property lease will specify how a rent review dispute is to be resolved between the parties. If the parties cannot agree a revised rent, the lease will normally provide for an Arbitrator or Independent Expert to be appointed to determine the matter. The parties could be free to jointly instruct an Arbitrator or as is usually the case, one party will make an application to The Royal Institution of Chartered Surveyors (RICS) to appoint an Arbitrator from its Dispute Resolution Panel.

Detailed specialist advice should be obtained before taking or refraining from any action as a result of the comments made in this publication, which are only intended as a brief introduction to the particular subjects. If you wish to discuss any of the issues referred to then you should consult your normal contact in the firm or your legal advisors. Strettons cannot take any responsibility and will not accept liability for action taken (or not taken) as a result of comments made within this guide. Strettons Copyright – May 2015

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