

RAMSKILL MARTIN

Arbitration

1. Introduction

Arbitration has been around for many years. There was an arbitration act as early as 1698 with the most recent act being the Arbitration Act 1996, which was effective from the 31 January 1997. This relatively recent Act codifies powers and procedures and gives arbitrators and the Parties more power to decide the way in which disputes should be resolved. Arbitration is an in depth investigation of a dispute but should involve cost effective procedures suitable for the case.

In many forms of construction contract Arbitration is the default procedure and Parties in a dispute must (unless they agree otherwise) resolve their disputes by Arbitration. This is, of course, subject to a Party's strategy right to Adjudication at any time. The two procedures must not be confused, although these days Adjudication is often considered to be fast track Arbitration.

ramskill martin has experience of Arbitration and one of its Directors is a practising Arbitrator.

2. Arbitration Procedures

Arbitration procedures can often be similar to litigation, although since the 1996 Act is often less rigid and can more easily be tailored to meet the requirements of the Parties. A good understanding of the law and practice of Arbitration is, of course, essential but equally important is a good understanding of the practical and commercial considerations when embarking on this procedure. ramskill martin always seeks to find solutions that make business sense but if Arbitration is necessary, then it can provide the following services:

- Pre-action position statement
- Issuing notice of Arbitration, if required and dealing with appointment of Arbitrator
- Representing Parties at case management meeting, and dealing with interlocutory procedures
- Preparation of statements of case or defence
- Appointing Counsel if required
- Negotiations during the Arbitration procedure
- Representing at hearings or assisting Counsel

3. Benefits of the Arbitration Process

Arbitration can be a speedy and cost effective method of resolving disputes with advantage that a claimant can recover costs if successful. During the Arbitration process each Party will have a full opportunity to make submissions and deal with evidence without the time constraints of Adjudication which some find too much of a constraint.

There is no doubt, however, that a Party should only embark on a formal procedure such as Arbitration when it has exhausted other methods of dispute resolution, such as negotiation.

It is also important to remember that the fact that there is an Arbitration clause does not mean that you cannot adjudicate. All options for resolving a dispute need to be carefully considered. (See our Profile Sheet on Risk Reviews)