CONSTRUCTION ADJUDICATION - FLOWCHART

Is there a dispute arising from a contract for:

i. the carrying out of construction operations?
ii. arranging for the carrying out of construction operations by others, whether under sub-contract or otherwise?
iii. providing labour for the carrying out of construction contracts?

NO → Resolve the dispute through court proceedings or through method otherwise agreed, (e.g. mediation or arbitration).

YES ↓

It is an "excluded contract", i.e. a contract:

i. with a party who is or intends to use the premises as his own dwelling house,
ii. for the drilling or extraction of oil or natural gas,
iii. for the extraction of minerals, tunneling or boring, or construction ground works for this purpose,
iv. for the assembly installation or demolition of plant, machinery, steelworks, where the primary activity is: (a) nuclear processing, power generation, water effluent treatment or (b) the production, transmission processing or storage of chemicals, pharmaceuticals, oil gas, steel or food and drink,
v. for the manufacture or delivery to site of building or engineering supplies, equipment, materials, plant or machinery,
vi. for the making, installation or repair of artistic work,
vii. which is a highway adoption agreement,
viii. which is a section 106 Planning Agreement,
ix. which is a sewer or drain adoption agreement,
x. which is an externally-financed NHS Trust PFI agreement,
xi. which is one of a certain number of PFI contracts,
xii. which is an insurance, company formation, loan and guarantee contracts, or
xiii. which is a development agreement resulting in the grant of a property interest?

YES → Resolve the dispute through court proceedings or through method otherwise agreed, (e.g. mediation or arbitration).

NO → Dispute must be resolved in accordance with the Scheme for Construction Contracts under the Housing Grants Construction and Regeneration Act 1996. If the contract does not have compliant adjudication procedures, the Scheme in any event applies.

A party to the contract may give a "Notice of Adjudication" (written notice given at any time of his intention to refer a dispute to the adjudicator). The notice must set out a brief description of the dispute together with the remedy sought.

Adjudicator must be chosen in one of the following ways:

- (1) The contract names the adjudicator or specifies how he/she will be appointed.
- (2) The parties mutually agree on the adjudicator or the process of selection.
- (3) Failing (1) and (2), the party referring the dispute to adjudication must request that an adjudicator nominating body (e.g. RICS or RIBA) selects an adjudicator.

The selected adjudicator must either accept or decline to act as adjudicator within 2 days of receiving a request to act.

Adjudicator declines → The parties may agree to revoke the appointment of the adjudicator.

Adjudicator accepts ↓

The party referring the dispute to the adjudicator must provide the adjudicator and the other parties to the contract with a written referral notice (containing details of dispute, the contract and other documents relied on) within 7 days of sending the adjudication notice to the other parties to the contract.

The adjudicator considers the dispute.

The adjudicator may take the initiative to ascertain the facts (including making a site visit) and the law and the parties must cooperate with the adjudicator's directions.

Adjudicator may give directions, e.g. that the responding party serves a response with 7 days.

The adjudicator must reach a decision no later than 28 days after the referral notice.

UNLESS → The party referring the dispute allows the adjudicator a further 14 days to come to a decision.

OR → By mutual agreement the parties extend the adjudicator's period of deliberation indefinitely.

The adjudicator gives a decision on the dispute. Decision is enforceable immediately unless the adjudicator says otherwise.

Decision binds all parties until either the parties agree otherwise following the decision or the decision is overturned in proceedings.

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