



## Adjudication – A Guide

### What is Adjudication?

- Adjudication is a statutory mechanism for resolving disputes in the construction industry and was introduced by the Housing Grants, Construction and Regeneration Act 1996 (the **Construction Act**)
- Adjudication was designed to be a **quick fix** remedy to protect cash-flow during a construction development.

### When is Adjudication available?

- Where a **dispute or difference** has crystallised. Only one dispute under a single construction contract can be referred to Adjudication at a time
- The same dispute or difference cannot be Adjudicated more than once
- Where your construction contract is in writing or evidenced in writing (but is not an excluded contract).

### What type of disputes can be referred to Adjudication?

Any **dispute or difference** may be referred to Adjudication, but it is perhaps best suited for resolving claims relating to:

- Interim payments
- Delay and disruption of the works
- Defects
- Extensions of time for completion of the works (including entitlement to LADs)
- Valuing the final account.

### How long does it take?

- Once the Referral Notice has been served, the Adjudicator must reach a decision within 28 days (subject to any agreed extensions)

- The process usually involves the consideration of written submissions, though where appropriate the Adjudicator may request a site inspection or a meeting with the parties
- The parties should always check the terms of the contract to determine which Adjudication rules apply.

### What is the effect of the Adjudicator's decision?

- The Adjudicator's decision is binding until the dispute is finally determined by legal proceedings, arbitration or by agreement
- The decision can be enforced in the Technology & Construction Court (TCC) by way of an expedited summary judgment application
- Successfully challenging an Adjudicator's decision is rare, though may be possible if:
  - The Adjudicator was incorrectly appointed
  - The dispute or difference had not crystallised
  - The terms of the contract are not evidenced in writing
  - The Adjudicator has exceeded his jurisdiction
  - The Adjudicator showed bias
  - The decision was delivered late.

### The future

The Adjudication process is set to change with the amended Construction Act, which is likely to take effect in late 2011. Some of the key changes include:

- Application to oral / partly oral contracts
- New payment regime
- Prohibition on **pay when certified** clauses
- New suspension rights.

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