



## **ADJUDICATION CONVERSION COURSE FOR THOSE WITH QUALIFICATIONS AND EXPERIENCE OF DISPUTE RESOLUTION**

### **INTRODUCTION TO THE COURSE FOR PARTICIPANTS**

#### Introduction

The Construction Contracts Act 2013 (“the Act”) was signed into law by the President on the 29<sup>th</sup> July 2013 and is likely to come into effect some time in 2014/2015. This Act provides for statutory adjudication of construction payment disputes and regulates payment practices. It is very likely to bring about significant change in how construction disputes are dealt with in this country.

While Section 6 of the Act provides some detail of how adjudication is to be carried out Section 9 of the Act provides for the publication of a Code of Practice governing adjudications. It is understood the Minister has prepared such a document essentially to provide a detailed procedure to be followed in adjudications. In addition Section 8 of the Act says the Minister will select a Panel of Adjudicators based on “their experience and expertise in dispute resolution procedures under Construction Contracts.”

#### Course description and delivery

This conversion course, which was first run in the autumn and winter of 2013-2014, is intended to provide intensive training to those who already have a working knowledge of the Irish law of contract, tort and evidence and significant experience of dealing with construction disputes either as arbitrators/ conciliators or as party legal representatives, to give them the skills required to act as adjudicators when the Act comes into effect. This course is not intended for those who do not have training and significant experience of dealing with construction disputes as set out above. Such persons are unlikely to perform well in the course assessments.

The course, which includes an assessment, will consider the law and practice of statutory adjudication from the perspective of the relevant provisions of the Act and in the light of experience from other jurisdictions where statutory adjudication of construction disputes has been introduced.

Participants who are successful in the conversion course assessments and who are already qualified as FCI Arb will receive a CI Arb certificate awarding them the title “*Accredited Adjudicator (Republic of Ireland)*”.

The course will be delivered over four weekends at the premises of Engineers Ireland in Clyde Road, Ballsbridge, Dublin 4 on:

- Friday/Saturday 19/20\* September 2014
- Friday/Saturday 10/11 October 2014

- Saturday 8 November 2014
- Friday/Saturday 12/13 December 2014

\*The session on Saturday 20 September may have to take place at another Dublin venue. If so this will be advised at the start of the course.

The course involves a mixture of seminars and workshops, a mock decision writing exercise handed out at the end of the second weekend to be submitted two weeks later, with feedback provided on the Saturday of the third weekend, and, on the fourth weekend, assessments. Each day will run between 9.00am and 6.00pm with an hour and a half for lunch and breaks except on Day 6, the Written Decision assessment, when a sandwich lunch and light refreshments will be available during the period allowed for the Decision Writing Assessment. A programme for the course is attached at Annex 1.

### Course syllabus

The course syllabus is as follows.

#### **First Weekend** (legislative and legal framework)

##### Friday:

- Introduction
- The Construction Contracts Act 2013
  - Contracts affected
  - Payment Provisions
  - Provisions for adjudication
  - Other provisions
- The new regime in practice
  - Implications for construction contracts and disputes
  - Role of the Minister
  - Relationship between adjudication, litigation and arbitration

##### Saturday:

- Statutory adjudication in other jurisdictions
- Adjudication and arbitration compared
- Adjudication – the basics
  - Statutory and contractual constraints
  - Jurisdiction
  - Impartiality
  - Fairness
  - Investigating the facts and the law
- Adjudication – Evidence
- Adjudication – likely attitude of the courts
  - On enforcement
  - On challenges
- Adjudication– status in other proceedings

#### **Second Weekend** (adjudication practice)

##### Friday:

- Plain English workshop
- Adjudication basics – review
- Adjudication procedure

The dispute  
The Notice  
The nomination/ appointment  
The Referral  
Party submissions  
Period for the adjudication  
The Decision

Saturday:

- Adjudication – management
  - First letter
  - Exchange of written statements
  - Techniques for investigating facts and law
  - Identifying the issues
  - Pitfalls and practical considerations
- Adjudication – the Decision
  - Decisions and Awards contrasted
  - The elements of the Decision
  - The substantive requirements
  - Identifying and addressing the issues
  - Reasoned or not
- Adjudicators' fees and ethics
- Mock decision writing exercise – hand out

**Third Weekend** (decision writing)

Saturday:

- Mock decision writing exercise – feedback
- Legal and factual analysis of parties cases
- Identifying and addressing issues – further exercises
- The introduction
- The background
- Writing reasons
- The operative part

**Forth Weekend** (assessment)

Friday:

- Written paper (morning)
- Assessment workshops (afternoon)

Saturday:

- Written decision

Assessment

The assessment part of the course will comprise the components: A written assessment, a work shop based assessment (three workshops) and a decision writing assessment. The pass mark in the written assessment and in the workshops is 55%. The pass mark in the decision writing assessment is 70%. To be successful a participant must pass all three Assessments at the first or second sitting. The assessments are time limited since one of the skills required of adjudicators is the ability to perform competently and efficiently under pressure.

The assessments are open book<sup>1</sup> but participants are unlikely to find that they have much time to consider material that they bring with them.

All materials provided to participants for the purpose of the assessments are copyright. It is provided solely for participants' use in completing the assessments. It must be handed back by participants to the Course Administrator or destroyed after each assessment.

Participants who are proficient typists are encouraged to bring their laptops for typing written assessments. If candidates wish to use voice recognition software they should raise this with the course administrator at the start of the course to establish whether facilities can, in the absolute discretion of the course administrators, be provided. Written assessed work is to be handed in at the end of each assessment either by paper or electronic copy. If assessments are handwritten they must be readily legible.

Since those attending this course will be qualified and experienced in the resolution of construction disputes, they are assumed to have a general understanding of how to manage disputes, of the Irish law of contract, tort and evidence and of the law as it applies to construction disputes as well as familiarity with the standard form contracts used in the Irish construction industry. Participants should refresh the knowledge of these matters in the days before they attend this Course. This course is not intended for those who have a poor grasp of such matters as they are unlikely to perform well in the course assessments.

### Learning outcomes

On successfully completing this Course, participants should be able to:

#### *Knowledge*

- Recall the key provisions of the Act and know what types of contracts they will apply to when the Act comes into force.
- Identify and describe the statutory and contractual framework that govern payment and dispute resolution under the Act.
- Describe the differences between statutory adjudication, arbitration and conciliation/mediation.
- Identify the legal and practical requirements for a successful statutory adjudication.
- Identify the key procedural stages of an adjudication and describe how these can be effectively managed by the adjudicator.
- Recall the legal principles that are likely to determine whether an adjudicator has jurisdiction and has produced an enforceable decision.
- Describe the formal and substantive requirements of an adjudicator's decision.

#### *Skills*

- Compare and contrast the methods for payment and dispute resolution that apply under the Act with those that currently apply.
- Compare and contrast the provisions of the Act with the statutory regimes for payment and adjudication that apply in other jurisdictions.
- Analyse typical procedural problems that may arise during the course of an adjudication and legal authorities and legislative provisions relevant to those problems.

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<sup>1</sup> The designation 'open-book' means that the use of any relevant Workbook, statutes and reference text books are permitted in the assessment.

- Anticipate on the basis of experience from other jurisdictions how the Irish Courts are likely to view enforcement of and challenges to adjudicators' decisions.
- Analyse from party submissions the legal and factual issues that have to be addressed when writing an adjudicator's decision.
- Compare and contrast the writing of an arbitral award and an adjudicator's decision.

### *Competences*

- Prepare clear and concise correspondence as the adjudicator in an adjudication.
- Address and resolve management and procedural issues that may arise in the course of adjudication.
- Assess the implication for adjudicators of the court's supervisory and supportive powers.
- Be able to prepare appropriate directions for the management of adjudication proceedings.
- Be able to satisfactorily conduct an adjudication in the available timescales.
- Be able to prepare an enforceable and understandable adjudicator's decision in the available timescales.

### Syllabus

The Construction Contracts Act 2013 ("the Act") and Schedule and the Code of Practice (if available)

Payment and dispute resolution under the Act

Nominations/appointments of adjudicators' and the role of the institutions and Minister

Basic principles of adjudication (jurisdiction, impartiality and fairness)

The legal context of adjudication, experience from other jurisdictions

Court supervision and support

Communication skills

Managing an adjudication

Evidence in adjudication

Issue identification and decision making

Decision writing

Adjudicators' ethics and fees

### Essential reading

The Construction Contracts Act 2013 including the Schedule and Code (when available)

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2010/2110/b21c10s.pdf>

CI Arb Module 2 - Law of Adjudication

CI Arb Module 3 - Adjudication

CI Arb Module 4 - Decision Writing

Copies of these Modules will be provided to participants. Note Chapters 2 to 5 of Module 2 are of little relevance to this country other than as background to the UK Act on which, to a limited extent, the Irish Act was modelled.

(Essential or non-lawyers, a good refresher for lawyers) Contract Law in Ireland (7<sup>th</sup> Edition, 2013); Robert Clark.

Suggested reading

International Construction Law Review [2011] ICLR 412, *Dispute Adjudication in Civil Law Countries - Phantom or Effective Dispute Resolution Method*, Dr Götz -Sebastian Hök.

International Construction Law Review [2012] 195, *A Comparative Review of International Construction Industry Payment Legislation, and Observations from the Australian Experience*, Jeremy Coggins and Steve Donohoe.

Construction Law Journal (2007) 23(5), 364, *Adjudication Down Under: A Survey of the Adjudication Legislation in Australia*, Robert Fenwick Elliott and Jeremy Coggins.

Adjudication Society Newsletters (selected editions to be provided electronically to participants).

Participants are also encouraged to visit <http://www.bcipa.qld.gov.au>. This website contains extensive material, including adjudicators' decisions, concerning the system of statutory adjudication of payment disputes in Queensland, Australia; a system which has certain similarities, particularly in regard to its focus on "payment disputes", to that under the Act.

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## ANNEX 1

### CONVERSION COURSE PROGRAMME

The course promoters reserve the right to amend the course programme where necessary due to speaker availability and circumstances beyond their control

#### 1<sup>st</sup> Weekend (legislative and legal framework)

##### Friday (Day 1).

09.00 – 09.15am	Introduction:	(Course structure and assessment process)	Course Director
09.15 – 10.00	Session 1:	The Construction Contracts Act 2013 – overview and applicable contracts	Kevin Kelly
10.00 – 10.45	Session 2:	The Construction Contracts Act – provisions concerning payment	Barrett Chapman
10.45 – 11.00	Coffee		
11.00 – 11.45	Session 3	The Construction Contracts Act – provisions concerning dispute resolution	Kevin Kelly
11.45 – 12.15pm	Session 4	The Construction Contracts Act – other provisions, the role of the Minister	Barrett Chapman
12.15 – 1.00	Workshop	Discussion groups	Peter Aeberli Kevin Kelly Barrett Chapman
1.15 – 2.00	Lunch		
2.00 – 2.45	Session 5	The new regime in practice – implications for payment practices	Kevin Kelly Peter Aeberli Keith Blizzard
2.45 – 3.30	Session 6	The new regime in practice – implications for contracting and contract administration	As above
3.30 – 3.45	Tea		
3.45 – 4.30	Session 7	The new regime in practice – implications for disputes	As above
4.30 – 5.15	Session 8	Statutory Adjudication in other jurisdictions	As above
5.15 – 6.00	Workshop	Discussion groups	As above

**1<sup>st</sup> Weekend (legislative and legal framework)**  
**Saturday (Day 2)**

09.00 – 09.15am	Review	Review of first day	Peter Aeberli
09.15 – 10.00	Session 9	Adjudication – basic principles: dispute, Notice, appointment, Referral	Peter Aeberli Keith Blizzard
10.00 – 10.45	Session 10	Adjudication – basic principles: Adjudication period, Party submissions, taking the initiative.	As above
10.45 – 11.00	Coffee		
11.00 – 11.45	Session 11	Adjudication – basic principles (continued): the Decision and after the Decision	As above
11.45 – 1.00pm	Workshop	Problem discussion groups	As above 1
1.00 – 2.00	Lunch		
2.00 – 2.45	Session 12	Jurisdiction, impartiality and fairness in Adjudication	Kevin Kelly Peter Aeberli Keith Blizzard
2.45 – 3.30	Session 13	Evidence in Adjudication	As above
3.30 – 3.45	Tea		
3.45 – 4.30	Session 14	Adjudication: likely court support and supervision	As above
4.30 – 5.00	Session 15	Adjudication: impact on other proceedings concerning the merits	As above
5.00 – 6.00pm	Workshop	Problem discussion groups	As above

**Second Weekend (adjudication practice)**

**Friday (Day 3).** The other speaker this afternoon will be Neville Tait.

9.00 – 11.00am	Session 16	Plain English workshop	Dr Alex Kerr. Jove Centre
11.00 – 11.15	Coffee		
11.15 – 1.15pm	Session 16	Plain English workshop	Dr Alex Kerr. Jove Centre
1.15 – 2.00	Lunch		
2.00 – 2.45	Session 17	Managing an adjudication: Accepting the appointment, first communication with the parties, the Referral.	Peter Aeberli Neville Tait
2.45 – 3.30	Session 18	Managing an adjudication: techniques for investigating	As above

		the facts and law	
3.30 – 3.45	Tea		
3.45 – 4.45	Session 19	Managing an adjudication: directing the procedure, subsequent communications with the parties	As above
4.45 – 6.00pm	Workshop	Problem discussion groups	As above

### **Second Weekend (adjudication practice)**

**Saturday (Day 4)** The other speaker this day will be Neville Tait.

9.00 – 9.45am	Session 20	Managing an adjudication: site views and meetings	Peter Aeberli Neville Tait
9.45 – 10.45	Session 21	Managing an adjudication: jurisdictional challenges	As above
10.45 – 11.00	Coffee		
11.00 – 11.45	Session 22	Managing an adjudication: impartiality, fairness and time	As above
11.45 – 12.30pm	Session 23	Adjudicator's fees and ethics	As above
12.30 – 1.15	Workshop	Problem discussion groups	As above
1.15 – 2.00	Lunch		
2.00 – 2.45	Session 24	Decision making: Identifying claims and issues	As above
2.45 – 3.30	Session 25	Decision making: Identifying the material facts and applicable law	As above
3.30 – 3.45	Tea		
3.45 – 4.30	Session 26	Decision writing	As above
4.30 – 6.00	Workshop	Problem discussion groups	As above
6.00pm	Mock decision writing exercise	Hand out papers	As above

### **Third Weekend (decision writing)**

**Saturday on Saturday, 8 November 2014 (Day 5)** The other speakers this day will be Neville Tait and Eamonn Conlon.

9.00 – 9.45am	Session 27	Mock decision writing exercise – Markers' general feedback, scripts handed back	Peter Aeberli Neville Tait
9.45 – 10.30	Session 28	Mock decision writing exercise – Review of the parties' cases, submissions and evidence	Peter Aeberli Eamonn Conlon Neville Tait
10.30 – 11.00	Session 29	Mock decision writing exercise – Preparing the introduction	As above

11.00 – 11.15	Coffee		
11.15 – 12.00	Session 30	Mock decision writing exercise – Preparing the background narrative	As above
12.00 – 12.45	Session 31	Identifying the legal basis of the claims and defences, and the issues to be decided	As above
12.45 – 1.15pm	Session 32	Mock decision writing exercise – Working with issues, identifying relevant submissions, law and evidence	As above
1.15 – 2.00	Lunch		
2.00 – 3.15	Workshop	Mock decision writing exercise – Working with issues, identifying relevant submissions, law and evidence	As above
3.15 – 3.30	Tea		
3.30– 4.30	Session 32	Mock decision writing exercise – Addressing and deciding issues	As above
4.30 – 5.00	Session 33	Mock decision writing exercise – Preparing the operative part	
5.00 – 6.00pm	Workshop	Mock decision writing exercise – Discussion of delegates’ decisions	As above

#### **Fourth Weekend (assessment)**

##### **Friday (Day 6)**

09.00 – 09.15am	Introduction	Introduction to assessments	Peter Aeberli
09.15 – 1.15pm	First Assessment	Written paper	Peter Aeberli
1.15 – 2.00	Lunch		
2.00 – 3.00	Second Assessment	First workshop	Peter Aeberli Keith Blizzard Chris Linnett Neville Tait
3.00 – 3.15	Break	Participants move between workshops	
3.15 – 4.15	Second Assessment	Second workshop	As above
4.15 – 4.30	Tea		
4.30 – 5.30	Second Assessment	Third workshop	As above
5.30 – 6.00pm	Third Assessment	Hand out of first tranche of papers for Decision writing assessment	Peter Aeberli

**Third Weekend (assessment)  
Saturday (Day 7)**

9.00 – 9.15am	Third Assessment	Hand out of second tranche of papers for Decision writing assessment	Peter Aeberli
9.15 – 5.00pm*	Third Assessment	Decision writing	As above
5.00 – 5.30pm		Conclusion of course	As above

\*Refreshments will be available during the day, with a sandwich lunch available between 1.00 and 2.00pm.

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