

## **Rules on decisions regarding security provided 2018**

### **Part 1 General provisions**

1(1) The following provisions apply if the parties have agreed to AB 18, ABR 18, ABT 18, AB Abridged and ABR Abridged (collectively referred to as AB in these provisions), or if the parties have otherwise agreed on dispute resolution by the Danish Building and Construction Arbitration Board in the form of a decision on security provided.

(2) A resolution on security provided is an arbitral matter subject to the Danish Arbitration Act.

(3) A stipulation in consumer contracts on a decision on security provided is not binding on the consumer if the contract was made before the dispute arose.

### **Part 2 Commencement of proceedings**

2(1) A case regarding a decision on security provided is commenced by the submission of a request to the Arbitration Board for a decision on security provided.

(2) A case regarding a decision on security provided may only be commenced if the dispute concerns one of the matters that can be subjected to such a decision according to AB.

(3) The request must comply with the requirements set out in AB regarding requests for payment of security provided.

3(1) A case regarding a decision on security provided may not be commenced if a speedy resolution or arbitration case is pending between the parties concerning the matters on which the request is based.

### **Part 3 Communication**

4(1) A request for a decision on security provided will be considered to have been filed at the time when received by the Arbitration Board. This also applies to other submissions.

(2) All correspondence, submissions and other materials pertaining to the case must be sent to the Arbitration Board in digital form, and digital copies must be sent to the other parties.

(3) In special circumstances the Arbitration Board may request or permit the submission of hardcopies of written material.

(4) The claimant's documents must be numbered in consecutive order (1, 2, etc), and the respondent's documents must be marked with letters in ascending order (A, B, etc). It must be stated on which case documents the party intends to rely.

(5) The Arbitration Board may lay down specific guidelines for digital communication and the management of documents.

### **Part 4 Case proceedings**

5(1) The parties must be treated equally and both parties must be given full opportunity to present their case within the framework of these provisions.

6(1) The expert will consider the case in accordance with these provisions, agreements between the parties, if any, and otherwise in a manner that the expert finds appropriate in the light of any wishes expressed by the parties.

7(1) A request for a decision regarding security provided must include the following:

- a) Data about the parties to the case, including their names, business registration numbers, addresses, email addresses and telephone numbers.
- b) Information about the contractual basis.
- c) A brief outline of the case including information about the claim, including its size, a specification of the payments claimed and the reasons for the claim.
- d) All necessary documents on which the claimant bases the claim, including the provision of security and a written request for payment, downward adjustment or discontinuation of the claim; see the AB provisions on this.



- e) Requests, if any, concerning the number of experts and their qualifications.

(2) The opposing party must state any requests concerning the number of experts and their qualifications no later than three working days after having received the request for a decision on security provided.

**8(1)** The Arbitration Board will appoint one or more experts after consultation of the parties within a time limit of three working days.

(2) Generally one technical expert will be appointed, but a legal expert or both a technical and a legal expert may be appointed if justified by the type and nature of the dispute. An expert may only exceptionally be appointed among the members of the Arbitration Board's college of legal arbitrators.

(3) Objections to the qualifications and/or competence of an expert must be filed within the time limit stated in subclause (1). If a party does not become aware of the circumstances that give rise to objection until later on, the objection must be filed immediately after those circumstances became known.

(4) In connection with his or her appointment and during the proceedings, an expert must immediately disclose information about circumstances that may give rise to reasonable doubt about his or her impartiality of independence.

**9(1)** The opposing party must file a response not later than ten working days after having received the request for a decision on security provided.

(2) The opposing party's response must include the following:

- a) The opposing party's claim, possibly a brief supplementary outline of the dispute and the reasons for the claim.
- b) Necessary documents on which the opposing party bases the claim.

(3) Each party may subsequently enter submissions within five working days after having received the opposing party's submissions.

(4) If exceptional circumstances justify it, the Arbitration Board may extend the time limits or allow the lodging of one additional set of submissions from each party. A request for such extension or additional submissions must be filed not later than three working days after receipt of the opposing party's submissions.

**10(1)** The expert may ask the parties to submit supplementary information and documents within a time limit of usually five working days.

(2) The expert may carry out an inspection after having summoned the parties with a notice of at least five working days. The expert must endeavour to find a date within ten working days that suits the parties. If necessary, the expert may propose three dates to the parties and then decide that the inspection should take place on one of those three dates. If a party is unable to participate on the date chosen, that party must participate by proxy.

(3) During the inspection the expert may seek to clarify factual matters, and the parties may answer any questions the expert may have.

(4) No expert appraisal may be arranged in connection with the case proceedings.

(5) There will be no oral hearing with witness examinations and the presentation of arguments since the matter will be decided on the basis of written material and inspections, if any.

(6) The expert may consult the Arbitration Board on matters of a legal nature.

**11(1)** If a party fails to provide information in the case, to assist in the furtherance of it or to respond within the time limits fixed, the expert will make a decision on the basis of the information available.

**12(1)** Instead of making a decision on security provided, the expert may in special circumstances refer the parties to arbitration in pursuance of AB if the expert does not find the matter suitable for a decision on security provided.

(2) If the dispute is referred to arbitration as set out in subclause (1), the expert may continue as an arbitrator if the parties agree to it.

**13(1)** In special circumstances the expert may decide that payments to contractors and to clients who are not public sector clients or a social housing organisation should be conditional upon the provision of security.

2) The Arbitration Board makes decisions regarding competence objections, other objections to the appointment of an expert and procedural disputes between the parties relating to the case proceedings.

(3) If the parties agree on it, the Arbitration Board may appoint a member of the Arbitration Board's college of legal arbitrators to make decisions of the nature set out in subclauses (1) and (2).

(4) If an objection to an appointed expert is not accommodated, the party who made the objection may ask a court of law to decide whether the objection should be accommodated. Such a request must be filed with a court of law within thirty calendar days after the opposing party was notified of the decision. While the request is being considered by the court, the expert against whom the objection was filed may continue the hearing of the case and make decisions.

(5) Decisions in pursuance of this provision will be made on the basis of written material, unless the Arbitration Board decides that the matter is to be considered at a meeting, possibly a meeting presided by a member of the Arbitration Board's college of legal arbitrators.

## **Part 5**

### **Conclusion of the case**

**15(1)** Not later than ten days after the expert's receipt of the final submissions and any supplementary information and material and after having made an inspection, if any, the expert will decide to which extent the request for payment is considered to be justified and who is to pay the costs of the case proceedings (see clause 22), and will also make a decision concerning any claims for contribution towards costs (see clause 22(3)).

(2) Such decisions must include information about written materials submitted in the case, including submissions and case exhibits, as well as information about any inspection made, including the date of the inspection, the parties present during the inspection and an account of discussions and decisions. In addition, the decision must set out the parties' claims, the outcome and the reasons on which the decision is based.

(3) The decision must be in writing, dated and signed by the expert.

(4) The decision will be sent to the Arbitration Board, which will forward it to the parties to the case.

5) In the event of disagreement between experts, the matter will be decided on the basis of a majority vote. In the event of a parity of votes, each expert will express his or her position and refer the matter to consideration under the AB rules on arbitration.

**16(1)** The case will be concluded

- a) when the expert has made a decision as set out in clause 15,
- b) if the parties have made a settlement,
- c) when the expert has made a decision in pursuance of subclause (2), or
- d) in the event of non-payment of a deposit as set out in clause 19.

(2) The expert will also make a decision on conclusion of the case if

- a) the request for a decision on security provided is waived,
- b) the parties agree to conclude the case, or
- c) the expert advises the parties to refer the matter to arbitration; see clause 12(1).

**17(1)** Within a period of ten working days after receipt of the decision a party may ask the Arbitration Board to make the expert correct calculation errors, typing errors or similar in the decision. The other parties must be consulted about such corrections. If the expert finds the request justified, the corrections must be made within five working days after receipt of the request.

(2) Within a period of three working days after making the decision, the expert may on his or her own accord correct errors of the type mentioned in subclause (1).

(3) Within a period of ten working days after receipt of the decision, a party may ask the Arbitration Board for a supplementary decision on claims presented during the proceedings but not mentioned in the decision. The other parties must be consulted about this. If the expert finds the request justified, the supplementary decision must be made within ten working days after receipt of the request.

(4) If necessary, the expert may extend the time limits set out in subclause (1), last sentence, and subclause (3), last sentence.



**18(1)** Like an arbitral award, a decision on security provided is binding on the parties to the case. The decision is also binding on the guarantor.

(2) A decision on payment of security provided must be complied with by the guarantor not later than three working days after the parties' and the guarantor's receipt of written notification of the decision.

(3) A decision on downward adjustment or discontinuation of security provided must be complied with not later than eight weeks after it was made.

(4) The decision may be referred to arbitration within eight weeks after it was made, and the arbitral award will then be the final decision in the dispute. If a decision is referred to arbitration, the arbitral tribunal must be informed of the decision.

(5) If arbitral proceedings are not commenced by the end of the time limit, the decision already made will be final.

(6) Referral to arbitration will have no suspensory effect, unless the decision concerns downward adjustment or discontinuation of security provided and the arbitral tribunal decides otherwise.

## **Part 6**

### **Provision of security and distribution of costs**

**19(1)** The party who requested a decision on security provided must pay a deposit covering all costs relating to the processing of the case; see clause 22.

2) The Arbitration Board determines the deposit amount and may increase that amount later on. The deposit must be paid at the request of the Arbitration Board.

(3) If the party who has requested a decision on security provided fails to pay a deposit as requested, the case will be dismissed.

**20(1)** The expert must ensure that, throughout the case proceedings, the deposit paid is sufficient to cover all costs associated with the proceedings.

(2) The expert must notify the Arbitration Board if the deposit paid proves to be insufficient.

**21(1)** The expert's fee will be based on time spent in accordance with the Arbitration Board's guidelines for the calculation of fees. The Arbitration Board determines the amount of the expert's fee.

**22(1)** The Arbitration Board will prepare a statement of the costs of processing the case, including the expert's fee, charges and duties payable to the Arbitration Board and any other expenses incurred.

(2) The Arbitration Board will pay the costs mentioned in subclause (1) out of the deposits paid and will settle with the parties.

(3) The parties are jointly and severally liable for the costs irrespective of how the costs are distributed in the decision and of whether the amount exceeds the deposits paid. If the joint and several liability means that a party has to pay more than that party has been ordered to pay according to the decision, the party in question has recourse against the party who should have paid.

**23(1)** Each party pays its own costs.

**24(1)** A party may bring the costs fixed for the processing of the case before a court of law as a separate action within thirty calendar days after the party was informed of the costs. If the costs are reduced, the reduction will also apply to a party who has not brought the matter before a court of law.

## **Part 7**

### **Miscellaneous provisions**

**25(1)** Neither the arbitrators nor the Arbitration Board and its employees or the members of its college of legal arbitrators can be held liable for an act or omission in relation to the proceedings or the outcome of them.

**26(1)** Case proceedings are confidential.

## **Part 8**

### **Adoption and entry into force**

**27(1)** These rules were adopted by the board of the Arbitration Board on 17 December 2018 in accordance with the statutes of the Arbitration Board (2017).

**28(1)** These rules come into force on 1 January 2019 and will, as from that date, apply to requests for decisions on security provided brought before the Arbitration Board under the rules.