



Rules on expert appraisal 2018

Part 1 General provisions

1(1) The following provisions apply if the parties have agreed to AB18, ABR18, ABT18, AB Abridged and ABR Abridged (collectively referred to as AB in these provisions), or if the parties have otherwise agreed on expert appraisal arranged by the Building and Construction Arbitration Board in accordance with these provisions.

(2) The purpose of expert appraisal is to secure evidence of or assessing actual conditions.

Part 2 Commencement of expert appraisal

2(1) Expert appraisal procedures are initiated by the submission of a request for expert appraisal to the Arbitration Board.

3(1) No expert appraisal procedure may be commenced before the parties have completed a negotiation procedure agreed upon, unless the purpose of the expert appraisal is to secure evidence.

(2) If a party has requested a decision regarding security provided or a speedy resolution as set out in AB, no expert appraisers may be appointed to consider the same matter until the question of provision of security provided or speedy resolution has been finally resolved, unless the purpose of expert appraisal is to secure evidence.

Part 3 Communication

4(1) A request for expert appraisal 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, all submissions and all other materials pertaining to the procedure 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) Documents submitted by the party having requested expert appraisal 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). If there is more than one respondent, documents submitted by the first respondent must be marked as follows: Indst. 1-A, Indst. 2-B, etc. It must be indicated which documents are relevant for the expert's appraisal.

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

Part 4 Case proceedings

5(1) A request for expert appraisal must contain the following information:

- 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 and the questions the expert is requested to answer.
- d) Whether the case is a status meeting (registration meeting) case.
- e) Whether the case is considered to be a matter of urgency and, if so, the reason why.
- f) All documents and other materials needed in relation to the questions raised.
- g) Whether an agreed negotiation procedure has been completed.
- h) Requests, if any, concerning the number of experts and their qualifications.
- i) The names of any professionals, enterprises, etc that have been involved in the matter.

(2) The respondent must declare requests, if any, concerning the desired number of experts and their qualifications within a deadline of one week.

(3) If questions regarding the quality of work performed are asked in connection with a progress registration case (see subclause 1(d)), such questions must appear from the request in the form of a separate set of questions to the expert.

6(1) The Arbitration Board will appoint one or more experts within a deadline of one week after having consulted the parties.



(2) Objections to the qualifications and/or competence of an expert must be filed before the expiry of the consultation period stated in subclause (1). If a party does not become aware of a circumstance that gives rise to an objection until later on, the objection must be made immediately after that party has become aware of it.

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

7(1) A question to an expert may only be rejected following an objection and if the question

- a) is not sufficiently clear;
- b) is irrelevant to the case;
- c) may unduly influence the expert's answer; or
- d) requires that the expert expresses views on matters that should be decided by a tribunal.

8(1) Documents and other material may only be rejected following an objection and if the content

- a) has no bearing on the expert's answers to the questions asked;
- b) may unduly influence the expert's answers.

(2) If, before a request for expert appraisal is submitted, a party has obtained a declaration from a technical expert about specific matters of a technical, financial or similar nature that are covered by the questions asked to the expert appraiser, such a declaration may be submitted as an exhibit in the case unless its contents, the circumstances under which it was produced or other matters justify rejection of the declaration following an objection to it. If a party has submitted such a declaration, the other party may submit a similar declaration on similar terms and conditions, although such a declaration was not obtained until after the request for expert appraisal was made.

(3) In special circumstances permission may be granted to submit a declaration obtained after the request for expert appraisal, as set out in subclause (2).

9(1) Remarks on questions to the expert, documents and other materials must be submitted within a period of two weeks.

(2) Comments on any remarks made in accordance with subclause (1) must be submitted within a period of one week by the party having requested expert appraisal.

(3) The Arbitration Board may in special circumstances accept deviation from the deadlines stated in subclauses (1) and (2), including in matters of urgency and in the case of extensive expert appraisal.

10(1) The parties may ask supplementary questions, including by submitting supplementary appraisal themes, both in connection with the request for expert appraisal and after the expert's report has been issued. Such questions will be treated in accordance with the same rules as those applying to appraisal themes in general.

11(1) The Arbitration Board sends the questions as well as documents and other materials to the expert requesting the provision of an expert report. The Arbitration Board may ask the parties to forward documents and other materials directly to the expert.

(2) Within one week after receipt of the questions, the expert appraiser must notify the Arbitration Board if the deadlines set out in these rules cannot be observed; see clause 12(2) (expert appraisal) and clause 16(1) (expert's report), and must state the reason. In such a scenario a new deadline must be suggested for further discussion with the Arbitration Board. This also applies during the subsequent processing of the case, but must be done in immediate continuation of the expert appraisal procedure.

(3) If the expert appraiser fails to comply with the deadlines fixed (see subclause (2)), the Arbitration Board may revoke the appointment of the expert and appoint another expert.

12(1) The expert appraiser will usually arrange for appraisal in the form of a meeting at which he or she goes through the questions and the accompanying materials, clarifies any matters of doubt, allows the parties to provide any supplementary information they may have and carries out an inspection. The expert may decide to prepare a report without holding such an appraisal meeting, unless one of the parties insists on it.



(2) The appraisal meeting must be held as soon as possible, but no later than four weeks after the expert's receipt of the case material.

(3) If an inspection is needed, it must be carried out in connection with the appraisal meeting or at one or more supplementary meetings held at the discretion of the expert appraiser.

(4) All parties involved must be invited to attend the first appraisal meeting and any other meetings held. The expert appraiser will endeavor to find a date that suits all parties. If necessary, the expert appraiser may give the parties three options and then fix the time and date for the appraisal meeting on that basis. If a party is unable to attend a meeting at the date and time fixed, that party must attend by proxy.

(5) The expert appraiser prepares minutes of the appraisal meeting and any other meetings held and sends the minutes to the parties to the case and the Arbitration Board as soon as possible.

13(1) The expert appraiser may ask the parties to provide supplementary information and materials.

(2) If the expert appraiser wishes to obtain additional information or to carry out additional investigations, the parties must be notified of this and given an opportunity to comment. This does not apply if the information sought is of a general technical nature.

14(1) If a party fails to provide information in the case, to assist in the furtherance of the case or to respond within the time limits fixed, the expert appraiser will prepare his or her report on the basis of the information available.

15(1) The Arbitration Board checks that all conditions for the Board's management of the case are met and will, if necessary, make decisions in that respect.

(2) On request, the Arbitration Board decides whether a case is to be treated as a matter of urgency; see clause 5(1)e and clause 19.

(3) The Arbitration Board makes decisions on objections concerning competence and any other objections relating to the appointment of an expert appraiser; see clause 6.

(4) The Arbitration Board makes decisions in procedural disputes between the parties in connection with the processing of the case, including objections relating to questions, documents or other materials; see clauses 7 and 8.

(5) If the parties agree, the Arbitration Board may appoint a member of the Arbitration Board's college of legal arbitrators to make decisions as set out in subclauses (1), (3) and (4).

(6) Decisions made in pursuance of this provision will be based on written material unless the Arbitration Board decides that the matter in question 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 appraisal procedure

16(1) The expert appraiser must submit his or her report within four weeks after all information has been submitted, unless another time frame has been fixed; see clause 11(2).

(2) The expert report must be in writing, dated and signed by the expert appraiser. It must contain information about the written materials submitted in connection with the appraisal procedure, including information about the questions asked to the expert, documents and other materials, the time of the appraisal meeting and the names of the people who attended it, as well as other information of relevance to the procedure.

(3) If the expert report is made by two or more expert appraisers, the opinion of each individual appraiser must be evident in the report if the appraisers do not agree.

(4) The expert appraiser sends the report to the Arbitration Board, which will send it to the parties in the case.

17(1) Within ten working days after receipt of the report, a party may ask the Arbitration Board to arrange that the expert appraiser corrects calculation errors, typing errors or similar errors in the report. The other parties must be consulted in this respect. If the expert appraiser finds the request reasonable, the corrections must be made within five working days after receipt of the request.



(2) The expert appraiser may of his or her own initiative correct errors after the report has been submitted.

(3) Within ten working days after having received the appraisal report, a party may ask the Arbitration Board to request the expert appraiser to file a supplementary report concerning questions included in the original list of questions but not answered in the first appraisal report. The other parties must be consulted in this respect. If the expert appraiser finds the request justified, the supplementary report must be filed within ten working days after receipt of the request.

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

18(1) A new expert appraisal by another expert appraiser will only be allowed if the Arbitration Board finds reason for it.

Part 6

Expedited processing

19(1) A case may be treated as urgent if there is a risk that the opportunity to secure evidence would otherwise be lost.

(2) A status meeting is treated as a matter of urgency.

(3) The expert appraiser may be appointed without prior consultation.

(4) The Arbitration Board may forward the questions to the expert appraiser even if the required consultation of parties has not been concluded.

(5) The expert appraiser may hold an appraisal meeting at short notice and without the consultation about the questions to the expert having been concluded. The expert appraiser may decide that a supplementary appraisal meeting should be held at a later date.

(6) By agreement with the expert appraiser, the Arbitration Board may fix a time and date for the appraisal meeting, which may be held in parallel to the other steps in the procedure.

(7) The expert appraiser must file a report within two weeks after all information in the case having been provided, unless another deadline has been fixed; see clause 11(2).

Part 7

Provision of security and distribution of costs

20(1) The party requesting expert appraisal must pay a deposit to guarantee payment of all costs associated with the appraisal, including the work performed by the expert in answering the questions; see clause 23. Parties asking supplementary questions must pay a deposit to guarantee payment of the associated costs; see clause 23.

(2) The Arbitration Board determines the size of the deposit and may subsequently increase the amount. The deposit must be paid when requested by the Arbitration Board.

(3) If the party requesting the expert appraisal fails to pay the deposit, the case will be dismissed unless the other party insists on having its own questions answered.

(4) If a party fails to pay a deposit for supplementary questions when requested to do so, the supplementary questions will not be answered.

21(1) The expert appraiser must notify the Arbitration Board within one week after having received the questions if the costs involved in the appraisal process are not covered by the deposit requested by the Arbitration Board. If this is the case, a new cost estimate must be provided including a breakdown of the costs to be paid by the parties to the expert appraisal. This also applies in relation to the continued processing of the case and must be done immediately after the expert appraisal at the latest.

(2) The Arbitration Board will make sure that all parties are heard in the event of changes to the cost estimate in connection with an increase of the deposit.

(3) After conclusion of the expert appraisal procedure, the expert appraiser must send to the Arbitration Board a complete statement of costs, distributed on the different parties, relating to the expert appraisal; see clause 20(1).

22(1) The expert appraiser will receive a fee based on time spent. The Arbitration Board determines the size of the expert appraiser's fee. When doing so, the Board may take into account whether there has been any failure to meet deadlines, observe timeframes or comply with financial estimates.

(2) The Arbitration Board may decide to reduce the fee or not pay it at all if, because of matters within the expert appraiser's control or in pursuance of clause 11(3), the expert appraiser has to withdraw from the expert appraisal procedure before a report has been submitted.



23(1) The Arbitration Board prepares a statement of the costs of conducting the expert appraisal under the auspices of the Arbitration Board, including the expert appraiser's fee, charges and duties payable to the Arbitration Board and any other costs incurred. The statement must break down the costs on the parties that have submitted questions to the expert appraiser.

(2) The Arbitration Board pays the costs mentioned in subclause (1) out of the deposits paid and settles the accounts with the parties.

(3) The party or parties having asked questions to the expert appraiser will be liable for payment of the costs involved, even if the costs exceed the deposit paid.

(4) If a dispute between the parties is brought before an arbitral tribunal, and if the dispute concerns matters that have been considered in connection with the expert appraisal, the costs paid by a party in relation to the Arbitration Board's management of the matter will be taken into consideration in the determination of costs in the arbitration case.

24(1) On the basis of a joint request from the parties the Arbitration Board may present a recommendation for distribution of costs, including the costs of legal assistance.

(2) On the basis of a joint request from the parties, the Arbitration Board may also appoint a member of the Board's college of legal arbitrators to decide on the distribution of costs; see subclause (1).

Part 8

Miscellaneous provisions

25(1) If an arbitral case concerning matters considered in connection with the expert appraisal is instituted, the appraisal proceedings will continue during the arbitral case.

(2) The arbitral tribunal will then be subrogated to the rights of the Arbitration Board under these rules.

(3) Parties to the expert appraisal proceedings who are not parties to the arbitral case continue as third parties in the expert appraisal.

26(1) When expert appraisal concerns more than two parties, the provisions of clauses 1 to 25 also apply to the relationship between those parties.

27(1) Neither the Arbitration Board, nor its employees or members of the college of legal arbitrators can be held liable for any action or omission in connection

with the appraisal procedure or the outcome of it.

28(1) Expert appraisal procedures are confidential.

Part 9

Adoption and entry into force

29(1) These rules were adopted by the board of directors of the Arbitration Board on 17 December 2018 in accordance with the Arbitration Board's statutes (2017).

30(1) These rules come into force on 1 January 2019 and will as from that date apply to arbitral cases brought before the Arbitration Board under the rules.