

DISPUTE RESOLUTION SERVICE



Dispute Resolution Services in South and Southern Africa



Introduction

Founded in 1868, the Royal Institution for Chartered Surveyors (RICS) has been shaping the built environment for over 150 years

RICS is a leading professional body and Royal Charter institution working in the public interest to advance knowledge, uphold standards, and inspire current and future professionals. Our members help to create and protect built and natural environments that are **sustainable, resilient** and **inclusive** for all.

A Global Leader in the Built and Natural Environments

RICS regulates **over 130,000 members** and candidates operating in the development and management of land, real estate, construction and infrastructure across **more than 140 countries globally**.

RICS develops and enforces leading international standards to protect consumers and businesses, ensuring the highest level of professionalism is employed across the built and natural environment.





The RICS Dispute Resolution Service (DRS) is the world's oldest and largest provider of alternative dispute resolution services in the land, property and construction industries.

In response to the severe delays and operational limitations of the courts, the South African construction, infrastructure, and engineering industries have fully embraced Alternative Dispute Resolution (ADR) as a means of resolving disputes in an **expedient** and **cost-effective** manner.

ADR mechanisms are expressly incorporated into construction contracts and agreements, which provide for traditional forms of ADR such as, adjudication, arbitration and mediation. The appointment of dispute resolvers is usually agreed upon by the parties.

RICS has facilitated the appointment of professional dispute resolvers for nearly **50 years**. This includes the appointment of arbitrators, adjudicators, independent experts, mediators and other dispute resolvers.

RICS dispute resolvers receive in-depth training on the legal, procedural and practical requirements associated with their chosen discipline of ADR. Moreover, they are subject to regular and rigorous reassessment processes which maintain the integrity and quality of their service, thereby ensuring that it is of the highest international standard.

For more information on DRS visit rics.org/drs

RICS Dispute Resolution Panels in South and Southern Africa

Establishment of Additional Panels in South and Southern Africa

In addition to supplementing its existing membership, RICS aims to establish new dispute resolution panels in line with Southern African industry requirements. Such panels will provide tailor-made dispute resolution services that are specifically designed to address a variety of issues arising within the Southern African built environment.

Opportunities for collaboration

This document explores the potential service options which could be available in South and Southern Africa. We would like to explore opportunities to collaborate with HKA and ENS on these potential services and any others in the region.



RICS Adjudication Service

The objective of adjudication is to reach **fair, rapid and cost-effective** decisions on disputes arising under construction contracts, usually within a specific timeframe.

Our adjudication services include:

A. Construction Adjudication:

- A process whereby parties to a construction contract are permitted, at any time, to refer a dispute to an independent adjudicator for determination within **28 days**.
- In the UK, this procedure is governed by **Section 108 of the Housing Grants Construction and Regeneration Act 1996** (the Construction Act).
- At present, South Africa has not enacted specific legislation providing for the statutory adjudication of construction disputes, although contractual adjudication is increasingly being utilised.
- The statutory introduction of a similar 28-day adjudication procedure could prove highly advantageous in resolving complex construction disputes in a quick and efficient manner.
- This would significantly reduce the cost and time that is ordinarily associated with litigation or longer adjudication proceedings as are currently often provided in South Africa.

B. Low Value Adjudication:

- A **low-cost adjudication procedure** aimed at resolving non-complex disputes where the sum claimed is less than certain a specified amount. In the UK this applies to claims of less than **£100,000.00** (approximately R2,300,000.00).
- The procedure provides for a streamlined and cost-effective process, under which:
 - the Adjudicator is expected to limit the length, or time for submission of any statement, response or argument.
 - the parties are required to limit their documents to no more than one A4 lever arch file (or electronic equivalent) per submission.
 - the Adjudicator, who is an expert in the subject matter in dispute, will decide the matter within 28 days.
- This simplified procedure could appeal to smaller construction projects, where parties do not wish to become entangled in prolonged and expensive litigation proceedings.

Advantages of Adjudication

- **Quick** - Adjudication is usually regulated by a strict timetable that ensures decisions are made quickly.
- **Cost efficient / maintains working relationships** - Either party can submit a Notice of Adjudication to commence adjudication proceedings at any time. The strict timescales allow disputes to be resolved as and when they arise, avoiding unnecessary tensions and costs between the parties.
- **Avoid delays** - An adjudicator's decision is binding and must be complied with strictly. Although the decision binds the parties immediately, it is not necessarily final and may be reconsidered by a court or arbitrator at a later date. This has the advantage of ensuring that payment is not held up in the interim. This allows work to continue on site until the matter is finally resolved.

The appointed RICS adjudicator will be a **subject-matter expert** with years of experience in the construction industry, who will decide on matters brought to their attention by the parties using their own specialist expertise.

RICS Mediation Service

Mediation is a more **flexible** approach to resolving construction-related disputes. The process involves the appointment of an independent mediator who facilitates settlement discussions between the parties. The mediator does not provide a determination of the issues but assists with clarifying and prioritising issues, crystallising needs, reality checking and helping parties in search for solutions.

RICS supports an evaluative approach to mediation in which the mediator, without ever imposing a solution on the parties, is able to draw on their years of experience and expertise in the sector to assist the parties to evaluate the strengths and weaknesses of their cases, so as to reach a commercially viable settlement.

Mediation provides a relatively **quick and cost-efficient** alternative to formal court or other ADR proceedings. It enables parties to take charge of the settlement process under the guidance of an independent and impartial third party.

Advantages of Mediation

Mediation can improve communication, negotiation and build consensus. The mediation process is confidential, voluntary, flexible and unlike court, adjudication or arbitration, there is no imposed decision: the parties retain ownership of and responsibility for any settlement that is reached.

The RICS Mediation Appointments Service allows parties to control the outcome of the dispute rather than having it imposed on them. The process cannot start or continue without both parties' agreement, meaning that they can control costs and shape the process best to meet their needs.

RICS appoints experienced mediators in a wide variety of construction and property-related disputes. Based on the increasing need for quick and affordable "out-of-court" resolution mechanisms, RICS is seeking to consolidate its creation of a panel of professional mediators in Southern Africa, who have the necessary qualifications and experience to act in accordance with RICS standards.



RICS Arbitration Service

Arbitration refers to a dispute resolution process whereby parties agree to refer a dispute to an independent arbitrator for determination. The parties are bound by their formal arbitration agreement, which sets out the terms and procedures governing the ensuing arbitration proceedings.

Arbitration proceedings in South Africa are governed by the Arbitration Act No. 42 of 1965. An arbitration award is legally binding and can be enforced by the courts.

RICS offers a simple, easy to access arbitration service. Parties can choose from three forms of arbitration procedure, underpinned by the internationally recognised CIMAR Rules:

- Short hearing.

This procedure is for use when the matters in dispute are to be determined principally by the arbitrator inspecting the relevant work and then forming an opinion.

- Documents only procedure.

This procedure is an alternative short procedure involving documents only, used when no hearing is necessary because the issues do not require oral evidence, or the sums in issue do not warrant the cost of a hearing

- Full procedure

This procedure is a full arbitration procedure, including a full hearing. Parties should choose this procedure only if it is inappropriate to adopt the 'short hearing' or 'documents only' procedure.

The arbitrator may at the commencement of proceedings explore this aspect with the parties, and if appropriate issue cost-saving directions to bring the arbitration in line with either a paper only or short hearing procedure. If the full procedure is adopted, the arbitrator will issue detailed directions for the preparation and conduct of the case, including the hearing.

RICS arbitration provides the flexibility of ad hoc arbitration, but with the process conducted under the aegis of the Royal Institution which delivers rigorous quality assurance and Professional Guidance as well as the maintenance of international standards among its arbitrators.





Advantages of Arbitration

- **Quick:** substantially quicker than formal court proceedings. Time periods are agreed expressly between the parties.
- **Cost-effective:** streamlined procedures reduce delays and result in speedy resolution of disputes. This reduces the time and cost involved in the dispute resolution process.
- **Private and confidential:** unlike open court, proceedings remain private and confidential.

Incorporating RICS arbitration clauses into construction and arbitration agreements

The appointment of RICS panel members, as arbitrators, can be facilitated through the incorporation of ADR clauses in construction and arbitration agreements. Examples of such clauses are as follows:

- The number of arbitrators shall be one or three, (to be decided by the parties or, in the absence of agreement, by the Royal Institution of Chartered Surveyors (RICS)).
- The Arbitrator(s) shall be appointed by RICS.

RICS Conflict Avoidance Process (CAP)

Internationally, the growing adoption of CAP procedures represents a sea-change in way in which the construction, engineering and infrastructure industries deal with conflict and disputes. The CAP process is a formal intervention designed to dispose of disputes before they reach the point that they need to be sent to arbitration, adjudication or court.

CAP helps parties keep their projects on time and within budget. RICS will provide the parties with a one person or three person CAP panel, who will work generally with the project delivery teams to ensure a clear understand by everyone of the issues involved. CAP Panels generally succeed in establishing agreement on a range of issues and on those elements which require a third party decision, the parties using CAP will receive a fully reasoned and comprehensive report containing non-binding recommendations on how to resolve the issue they are grappling with. The growing international experience of CAP processes show that parties are empowered by the formal CAP Report to settle the disputes between them without the need for further arbitration or court proceedings.

The CAP procedure can be written into contracts to help parties involved in construction, engineering and infrastructure projects to resolve disagreements out of court. It encourages parties to resolve problems at the time of the event, to nip them in the bud before they escalate to drawn-out, damaging disputes. CAP can also be utilised on an ad hoc basis by agreement between the parties.

How CAP works

1. A CAP Panel of one or three professionals will be appointed by RICS to help parties resolve the issue/disagreement they are facing.
2. The CAP Panel are experts in the subject at the heart of the dispute so will quickly get to the crux of the matter.
3. The CAP Panel will work alongside the parties to understand the issue(s) they are grappling with.
4. Using their experience and technical expertise, the CAP Panel will then provide a fully reasoned CAP Report setting out a practical means to resolve the issue(s).

For a detailed explanation and a step-by-step walk-through of the process, please see the CAP User Guide which can be accessed using the following link: [cap-user-guide.pdf](https://www.rics.org/cap-user-guide.pdf) (rics.org)

Advantages of CAP

- Quicker and cheaper than litigation and adversarial dispute resolution procedures.
- It helps to “nip issues in the bud” before they escalate.
- It helps maintain good working relations between the parties.
- The CAP Panel’s recommendations are not imposed on the parties.
- Parties retain control over the outcome of their disagreement/dispute.
- It gives parties an impartial risk analysis of how the dispute may be decided if the matter were referred to formal procedures such as adjudication, arbitration, or litigation.
- CAP is pay-as-you-go-you service - you only pay for it when you use it.



RICS Dispute Board Service

RICS has for many years trained and provided dispute resolvers to act as Chairs and Members of DABs and DRBs on projects around the world, often where these are required under the FIDIC forms of contract.

A Dispute Board is a standing board which is set up at the outset of the contract and remains in place for its entire duration. The board consists of either one or three people, usually experienced in the contract matter, who will make regular visits to site, meet with the parties and identify any issues before they become disputes.

There are two main types of Dispute Board: Dispute Adjudication Boards (DAB) and Dispute Review Board (DRB).

Dispute Adjudication Board (DAB) or Dispute Avoidance Adjudication Board (DAAB)

An adjudication decision made by a DAB or DAAB, is **normally binding** on the contracting parties if: a) they agree to accept it; or b) neither party raises an objection within a period stipulated in the contract.

Dispute Review Board (DRB)

A Dispute Review Board provides **informal advice and non-binding recommendations** rather than binding decisions.

RICS Expert Determination Service

The parties agree that the dispute will be decided for them by an experienced Independent Determiner who is also an expert in the subject matter.

The expert will base their decision on an assessment of:

- i. the evidence submitted by each of the parties
- ii. the results of their own investigations
- iii. application of their own knowledge and expertise

Expert determination is well suited to resolving disputes that are centred around a **single question** or issue such as the amount of compensation to be paid.

The Appointment of RICS Dispute Resolvers

RICS employs a long-established and robust administrative process for appointing various disciplines of dispute resolvers.

Our priority is always to identify the most appropriate person/s to deal with the case, i.e., a person who is suitably qualified, is free from conflicts of interest, has appropriate PI insurance, and, critically, has the right skills, knowledge and experience to deal with the matter in dispute.

All RICS appointments are made formally by the President of the Royal Institution of Chartered Surveyors whose powers are delegated to the RICS Dispute Resolution Service (DRS) by its Governing Council.

The DRS international appointments team is based at the RICS Head Office in the UK and works in consultation with its regional offices in 140 countries around the world. When making appointments, DRS considers a wide range of factors including: the parties to the case, the subject project or property, the nature of the dispute and its complexity, and the sum of monies at issue.

RICS will also take into consideration the geographical location of the project, business or subject property and that of the parties, as well as language preferences and/or other specific requests or matters raised by the parties



Training and Courses

The following courses and programmes are offered by RICS to South African professionals involved in the construction and built environment sectors:

- Expert Witness Certificate
- Diploma in Adjudication
- Diploma in International Arbitration (SSA)
- Diploma in International Arbitration (MENA)
- Mediation Training Programme
- Online Expert Determination.
- Foundation Certificate in Alternative Dispute Resolution

Please visit: [All Training & Events](#) for more information on the different programmes and courses offered by RICS.

For more information DRS and the ADR Services offered by RICS please visit rics.org/drs.

Contact us

Please contact drs@rics.org if you have any questions or would like further information



Delivering confidence

We are RICS. As a member-led chartered professional body working in the public interest, we uphold the highest technical and ethical standards. We inspire professionalism, advance knowledge and support our members across global markets to make an effective contribution for the benefit of society. We independently regulate our members in the management of land, real estate, construction and infrastructure. Our work with others supports their professional practice and pioneers a natural and built environment that is sustainable, resilient and inclusive for all.

Americas, Europe, Middle East & Africa
aemea@rics.org

Asia Pacific
apac@rics.org

United Kingdom & Ireland
contactrics@rics.org



[rics.org](https://www.rics.org)